

Maine Townsgman

The Magazine
of the Maine Municipal Association

January 2015

Special Edition: Municipal Collaboration

From mill towns to
resort towns, local
partnerships thrive

ALSO IN THIS ISSUE
Two towns, one police chief
Community paramedicine
Absentee voting, early elections



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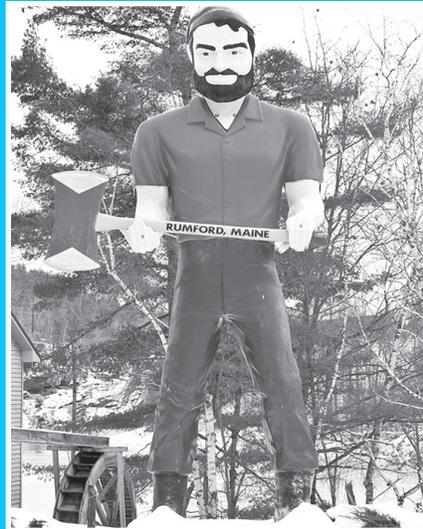
Maine Townsman

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Mill Towns Unite



The joint hiring of a municipal manager has prompted a thorough review of ways that Rumford and Mexico can continue working together.

Municipal collaboration examples number well into the hundreds, and probably into the thousands. MMA hopes this edition of the Maine Townsman strongly conveys that reality. [Page 5](#)

Risk Manager: Yes, it's that time of year. Ice and snow make for slippery conditions on sidewalks and walkways, and municipalities can be liable for certain defects. [Page 17](#)

Cover photo: MMA Website & Social Media Editor Ben Thomas captured this iconic, wintertime shot in Rumford recently.

'Learning As We Go'

Leaders in Bar Harbor and Mount Desert credit police Chief Jim Willis' management style for playing a big role in the early success of a joint policing project on their island. [Page 13](#)

Rural State, Feels Right

'Community paramedicine' is a program being rolled out across the state. Working together, towns control health-care spending as EMTs handle routine procedures. [Page 21](#)

High Turnout Yields Smooth Sailing

The 2014 election was a doozy. Maine experienced the highest voter turnout in the nation and municipal clerks contended with absentee voting and other changes. [Page 26](#)

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A MESSAGE FROM MMA

BY ERIC CONRAD / DIRECTOR OF COMMUNICATION & EDUCATIONAL SERVICES, MMA

Lifting the veil on municipal collaboration

This “Collaboration Edition” of the Maine Townsman came together by accident.

We always try to provide members with timely, substantive reports about developing municipal issues and trends, through our monthly magazine.

In that way, we’ve been tracking the progress of John Madigan, municipal manager in both Rumford and Mexico, for months. We were aware of the shared police chief project developed among several towns on Mount Desert Island. And, months ago, we were told by fire-rescue officials that changes were afoot with community ambulance services and the federal Affordable Care Act.

When these developments and our writers’ efforts culminated at the same time, we knew we had something different and, hopefully, special: A look at new and changing municipal collaboration efforts in Maine, the kind that happen all the time and too often are overlooked.

We all hear the myths: Maine is parochial. We have too many towns and cities. Local leaders protect their fiefdoms, right down to specific services and municipal departments.

There are two major problems with those views:

1. The numbers paint a different picture. There are hundreds of examples of municipal collaboration in Maine. Sharing and working together is, in fact, the norm among municipalities. Also, third-party reports have looked into municipal spending in Maine and concluded that we are a frugal lot. Indeed, if bigger government operates more efficiently, why does the federal government run annual deficits in the hundreds of billions of dollars? Why must the state draw from the municipal revenue sharing fund to cover its own rising spending?

The local government chapter (P. 56) of Envision Maine’s 2010 report, “Reinventing Maine Government,” starts this way: “A good deal is made about how many towns we have (just under 500) and how expensive they are, or at least seem to be to local taxpayers. The numbers, though, tell a more complicated story. If you took schools out of lo-

cal budgets, which represent 71 percent of local budgets, the remaining 29 percent of spending – on public works, public safety and municipal services – matches up well with other local governments across the country. In fact, Maine town services cost 33% less than towns in other rural states.”

That was Envision Maine’s conclusion, not Maine Municipal Association’s. It is but one example.

2. When consolidation or collaborative efforts are criticized, it’s often citizens, not municipal leaders, who initially dislike what they see. There is no better example than the series of Maine communities that recently have withdrawn from forced school consolidations.

That consolidation effort, begun under former Gov. John Baldacci, had several flaws: It was a top-down, state-driven effort that employed sticks and no financial carrots; it created a “two Maines” divide by exempting larger urban and suburban schools; it left some towns feeling a loss of control as they dealt with minority representation on a larger school board. Perhaps most importantly, as the months went by, few financial savings were realized.

MMA’s position for years has been that municipal collaboration is a worthy aim, both to improve services and to deliver them efficiently. Collaboration is highlighted among our seven, written “core beliefs.” However, local collaboration works best when it comes from the ground up – ideas from citizens, department heads, municipal managers and elected officials who know what will work locally, what probably won’t work, and why.

This month’s Maine Townsman aims to make another point, one that we would like to see the media recognize more often: Local collaboration is alive and well. It happens in mill communities such as Rumford and Mexico, in tourist towns like Bar Harbor and Mount Desert and in many communities in between that are served by regional emergency-service providers whose employees save lives and do so in a cost-effective manner. ■

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'Real commitment:' Rumford and Mexico look to share far more

Municipal Resources from New Hampshire is brought in to aid with collaboration talks. A feeling remains to protect valued local services.

By Douglas Rooks

There hasn't been a consolidation of two Maine towns in nearly a century, since Dover and Foxcroft joined forces in 1922 to become Dover-Foxcroft. But Rumford and Mexico, on opposite banks of the Androscoggin River in Oxford County, are now mulling the prospect.

But if they do join, it will likely happen slowly and gradually, based on shared services and an approach that could be termed mutual self-interest.

The most visible step toward increased cooperation came in December 2013, when Mexico and Rumford agreed to jointly hire John Madigan as a shared town manager, after the resignation of Carlo Puiia in Rumford.

Madigan was the logical choice. He has now served as Mexico's town manager for 10 years, and had the same job in Rumford, from 1985-92, as well as other town manager posts in Maine. He was given a six-month contract at first, which has now been extended another year.

As Madigan describes it, the current collaborative talks, which take place in joint meetings of the two five-member boards of selectmen, are a pragmatic examination of what services might be offered jointly, and how that might be accomplished.

But there have been some successes already.

Two years ago, the two towns purchased a ladder truck – probably the most expensive piece of fire equipment in regular use – after the two



A view outside the Rumford Municipal Offices. (Photo by Ben Thomas)

fire chiefs negotiated a formula based on costs, population and valuation. For that agreement, which includes a reserve fund to eventually replace the truck, Rumford pays 80 percent and Mexico 20 percent. Everyone seems satisfied by the outcome, Madigan said.

"Not everything we do is going to work," he said, "but there seems to be a real commitment to keep trying."

The two towns split Madigan's salary equally. He divides his time evenly between the two town offices. They also split the costs of a \$24,000 consultant's study of joint services, hiring Don Jutton of Municipal Resources in Meredith, N.H.

It was important for both boards

to have a professional assessment by someone with no stake in the outcome, and having an out-of-state firm that's nonetheless familiar with Maine municipal government was a plus, Madigan said.

Police services studied

The current project is a possible consolidation of police services, with a final consultant's report submitted Oct. 30 and intensive discussion beginning at a joint meeting Dec. 11 and continuing into 2015.

Both departments currently provide 24/7 coverage, with 12 sworn police officers in Rumford and five in Mexico. The consultant's report finds that both departments are larger,

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

per capita, than those in other rural Maine communities.

The plan discussed on Dec. 11 envisions a combined department with 15 officers, two fewer than at present, with an additional “overlay” patrol shift and a two-person detective unit.

Madigan said there’s no doubt that the towns’ shrinking populations and reduced employment at the Rumford paper mill, the area’s principal employer, have brought consolidation talk to the fore.

In 1970, Rumford had 9,363 residents while Mexico has 4,309. By 2013, Rumford had an estimated 5,841 residents and Mexico 2,681, a 38 percent overall decline. The combined population of both towns, now 8,522, is less than Rumford’s was 40 years ago.

“The decline in population, decade by decade, almost exactly tracks employment at the mill,” said Madigan. The mill payroll peaked at 2,500,



John Madigan

and now employs 800 workers. (See related article on page 9.)

The need to maintain services amid declines both in population and valuation has produced some of the highest property tax rates in the state, with both towns registering mill rates above \$25 per thousand.

But the budget pressure isn’t producing a crash effort to cut costs,

Madigan said. Selectmen in both towns are wary of moves that would reduce the quality of services that also enjoy strong support among voters, he said.

All options open

The police discussion is an example of all options being on the table.

While the consultant’s report focuses on a possible merger of the two departments, selectman also asked for a proposal from the Oxford County Sheriff’s office about replacing the municipal departments with coverage

by county deputies. Oxford County performs a similar service for Bethel, which disbanded its four-officer police department in 2010.

The two proposals got nearly two hours of discussion on Dec. 11, with all aspects being scrutinized. Madigan said he got the sense that municipal consolidation is still the leading contender, because it sticks closer to what Mexico and Rumford now offer. There isn’t a great deal of difference in the financial packages, which both offer modest savings over current costs.

Another possible discussion partner is nearby Dixfield, whose police chief recently resigned. A three-town department would offer additional advantages, as well as greater savings, Madigan said.

Greg Buccina, who chairs the Rumford selectmen, has served on the board 12 years and as chair since 2009. He said the two years of joint discussions with Mexico have been useful because the two towns now have a good framework for pursuing cooperative arrangements. Ultimately, he said, the voters will have to ratify any agreements the two boards make.

Buccina pointed out that there are some significant differences in the way the two municipal governments are structured. Rumford has union contracts for both the police and fire departments, while only the Mexico police force is unionized.

Pay scales are also higher in Rumford. None of this means that unified departments can’t be devised, only that decisions have to be made deliberately, and not under the pressure of annual budgets, he added.

But it’s not as if there isn’t already some pressure. Two years ago, it took multiple budget votes in both towns before they were approved. Madigan attributed those difficulties to voter concerns about possible mill cutbacks, worries that have receded but have not disappeared.

Buccina said another asset of the consolidation talks is that there are active committees studying each of the services involved.

Prioritizing the potential

A preliminary report from Municipal Resources found that the greatest potential for savings and service improvements would lie in the police, fire and public works departments,



Mexico proudly touts its gateway status. (Photo by Ben Thomas)

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Catalyst Paper purchase of Rumford mill has community breathing cautious sigh of relief

The pulp and paper mill that dominates the economy, and the landscape, of the Rumford-Mexico area was built by Hugh Chisholm of the Oxford Paper Co. in 1901, the heyday of a Maine industry that once led the world in paper production.

Its pending sale to Catalyst Paper, a Canadian producer based in British Columbia, has the area breathing a cautious sign of relief, according to Rumford and Mexico's town manager, John Madigan.

"They're a paper company, and they say this mill will provide complementary strengths to their business lines," he said.

That provides a significant contrast to the current ownership, NewPage, controlled by Cerebrus Capital Management, one of the Wall Street investment firms that emerged as mill buyers in the mid-2000s; two of them recently shut down mills in East Millinocket and Bucksport.

It's no secret that the North American paper industry has continued to decline in terms of employment and its share of world production, but Madigan said plant employees hope that Catalyst can provide stability for the 800 workers now employed in Rumford. The U.S. Justice Department has approved the Verso-New Page merger, which should help facilitate the sale to Catalyst.

The Catalyst sale is one aspect of

a complex merger between NewPage and Verso, which owns the Bucksport mill that closed in December. The spinoff of the Rumford mill was prompted by anti-trust concerns raised by the U.S. Department of Justice, and the cost of financing Verso's buyout of NewPage.

Catalyst has three mills in British Columbia, and in October announced a \$74 million purchase and sales agreement for the Rumford mill and a second mill in Biron, Wisc.

Since then, Madigan said NewPage has begun the transfer of state environmental licenses to Catalyst, among other preliminary legal work, but the sale won't close until after the Verso-NewPage deal is completed.

"It may give us some breathing room," Madigan said. He'd also like to see more corporate involvement in the community that was common under previous owners but not under NewPage.

Oxford Paper sold its Rumford holdings in 1967. The mill was owned by Boise Cascade from 1976-96, when it was sold to Mead Corp. The 2002 merger of Mead with Westvaco then led to the divestment to NewPage in 2005.

Rumford annually produces 500,000 tons of coated paper that is used in books, magazines, game boards and gift wrap, among other products. ■

Rumford-Mexico (cont'd)

which are staffed mostly by professionals. Merging libraries and recreation departments, which involve mostly volunteers, would offer little in the way of savings, and are programs in which each municipality may feel the greatest pride of place.

Other initiatives suggest that the communities are willing to move forward with consolidation when it makes sense, Buccina said. Rumford and Mexico, along with neighboring Roxbury and Andover, formed SAD 43 and built Mountain Valley High School nearly four decades ago. In 2009, they joined SADs based in Dixfield and Buckfield to form RSU 10, geographically the largest school district in Maine.

Buccina agrees that the ladder truck purchase offers a good model for future cooperation. On the other hand, he said, "I've made it clear to John (Madigan) and to the other selectman that ultimately Rumford needs its own manager."

His counterpart in Mexico, Rich-



Rumford has a lumberjack statue, too. (Photo by Ben Thomas)



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ard Philbrick, has his own concerns about the form consolidation might take, but said that he's impressed by Madigan's performance to date.

"He knows both towns very well, and has done a lot for them." In his earlier stint in Rumford, for instance, Madigan help launch the area's first industrial park, a critical factor in diversifying the area's economy, Philbrick said.

Young vs. old

He goes back to the formation of SAD 43 as a guide that "ownership" questions can be overcome. "I noticed that the kids took to it a lot faster than the adults," he said. "It's different when you've been here all your life and are used to a certain way of doing things."

Philbrick also agrees that the police departments are a good place to start, since, after schools, they require the largest local expenditures – which has become even a larger concern now that the state has cut back on revenue sharing and other municipal revenue sources.

Philbrick has some doubts about the preliminary recommendations he's seen about cuts in public works employees, should that option be pursued.

"Rumford, in particular, has a great road crew that's helped us on more than one occasion, he said. "I'd want to preserve the roles of long-time employees."

The consultant's report and community meetings have raised other possibilities. If a police merger went ahead, for instance, that both forces would operate out of Mexico, which has space nearly twice as large as Rumford, despite Rumford's larger police force. That might leave enough room for town hall operations to consolidate on the Rumford side.

Both Buccina and Philbrick say they can imagine, if more joint ventures go ahead, that the two town governments might someday become one. Buccina, however, said that it's hard to see the municipal entities disappear-

ing entirely, "but a unified government to provide services" could make sense.

That's probably a long time off, in any case. What John Madigan has seen in recent meetings between the two boards of selectmen is perhaps the most significant clue to how their working relationships have evolved.

"There's give and take around the table and you tend to forget which town is being represented," he said. "They really are beginning to work as a single board."

That's why he's reasonably confident that, "This time, something will really happen." ■



The Mexico Public Library has a high-profile location. (Photo by Ben Thomas)

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Mount Desert, Bar Harbor find success with one police chief

The chief's leadership style has a lot to do with the compliments, local officials say. Meanwhile, police officers are benefitting from more training and authority.

By Liz Chapman Mockler

Sometimes one head is better than two. That's what officials and residents in the neighboring towns of Bar Harbor and Mount Desert have decided in extending a pilot agreement to share one police chief between the two island communities.

The new agreement, inked in mid-December, continues the sharing arrangement for a full year, following two successful six-month runs. Both elected boards unanimously endorsed the agreement just before the holiday break.

The remaining two towns on Mount Desert Island, Southwest Harbor and Tremont, have maintained their existing operations. Southwest Harbor maintains an eight-officer department, which includes four part-time officers. Tremont, the smallest MDI town, pays the Hancock County Sheriff's Office and Maine State Police for coverage.

"We're learning as we go, but it's exciting to work on something like this," said Bar Harbor Council Chairman Paul Paradis, one of two councilors who helped draft the new agreement.

Paradis and others hope they have come across a model other small neighboring towns might use, which clears the perennial voter hurdle by consolidating administration while maintaining each town's police department, station, cruisers and officers.

"Our officers are smiling more and seem more excited about their jobs,"

Liz Chapman Mockler is a freelance writer from Norway and regular contributor to the Maine Townsman, lizmockler@hotmail.com.

ABOUT THE ISLAND

Mount Desert Island is Maine's largest island and the 6th largest island in the contiguous United States. It encompasses 108 square miles. It is the second-largest island on the eastern seaboard behind Long Island, N.Y. There are 10,000 year-round residents on the island, but an estimated 2 million tourists visit the Hancock County island, home to Acadia National Park, the 9th busiest national park in the nation, each year.

Bar Harbor
Population: 5,235
Land mass: 63 square miles
Number of households: 1,900
Number of villages: 3
Number of police: 12

Mount Desert
Population: 2,053
Land mass: 55 square miles
Number of households: 962
Number of villages: 6
Number of police: 4

Sources: U.S. Census, towns, National Park Service

Paradis said. "They are more empowered and I think they welcome that. There's just a general sense that our officers are happier."

Mount Desert Town Manager Durlin Lunt, a strong supporter of the

Kittery-Eliot chief says police must take the lead in pushing for more police cooperation

One of the people Jim Willis called when weighing whether to serve as police chief for both Bar Harbor and Mount Desert was Ted Short, who began last year serving as police chief for the towns of Kittery and Eliot.

While Willis was at first unsure of the proposal, and questioning whether he could do a good job for both communities, chief Short strongly encouraged him to try it.

Short has already started pushing statewide for other neighboring towns to follow Short and Willis and their town officials.

"I'm making a lot of police chiefs nervous," said Short, who watched over the decades, as did Mount Desert Town Manager Durlin Lunt, while voters in one town after another rejected joining forces with their neighbors.

Short is shaking up some chiefs in Maine by advocating for fewer of them. He is a retired State Police commander who was responsible for police coverage in 15 towns as part of Troop A in Kittery.

As in the Mount Desert Island model, fashioned closely to what Short

(cont'd on pg. 14)

Collaboration Corner is a regular feature in the Maine Townsman, highlighting ways that municipalities work together to become more efficient and better serve citizens.



Chief Willis (center), surrounded by key municipal officials on MDI. (Photo by Jennifer McWain)

arrangement from day one, is a native of the town. Lunt said he had thought for years, particularly since the island's four small towns merged their schools in 1968, that they also should try to combine other crucial public services.

As a resident, and a selectman from 1974 to 1992, Lunt said he figured police and fire coverage were obvious opportunities, since the towns' first responders already worked together under mutual aid pacts.

But while many collaborative efforts have been successful through the work of the Greater MDI League of Towns, created after the school consolidation nearly 50 years ago, residents historically have rejected merging full departments with other towns.

Lunt, who as a high school student did not have friends his age in any of the other three MDI towns, embraced the school consolidation and hoped it would lead to a closer relationship among the communities.

But the fear of losing their identities as separate towns sharing one island is a historical and stubborn public concern. Before the towns merged schools, Lunt described an "Iron Curtain" kind of feeling on MDI, when each town guarded its own traditions and heritage.

Bar Harbor, for instance, includes most of Acadia National Park and is Maine's No. 1 tourism destination. Southwest Harbor, meanwhile, bills itself to tourists as "The QuietSide" of MDI. Tremont is essentially a small fishing town, and Mount Desert is known for its famous Somes Sound fjord.

"That (Iron Curtain feeling) has

lifted somewhat," Lunt said.

Lunt said he understands the public's worries and desires, and hopes sharing a police chief while maintaining each department's community presence and identity will achieve the same long-held goal.

"Even Noah only needed two of everything," Lunt said. "Why do we need four of everything?"

Conversation begins

In mid-October 2013, with Bar Harbor's police chief on administrative leave, then-manager Dana Reed began talking to other police chiefs, the sheriff and Bar Harbor and Ellsworth police. He was looking for a way to run the police department while the chief was on leave, knowing the process could stretch on for months.

What he kept hearing, Reed said, was how much respect Jim Willis, Mount Desert's police chief for 11 years, commanded wherever Reed went.

So Reed called Lunt to ask for temporary help. Lunt was eager to oblige, wanting to be a good neighbor and to assist a friend and a town council in the midst of a crisis.

There was only one problem: Willis didn't want the job. He was friendly with the Bar Harbor officers and a friend of the embattled chief, he said. There was angst and confusion and frustration awaiting Willis if he agreed to take the temporary assignment.

And he was happy in Mount Desert. He had just restructured the small force to give the officers more responsibility – and more authority – by creating a lieutenant's position, which was

Kittery-Eliot chief (cont'd)

developed over the past year, Kittery needed a new police chief. Officials from both towns asked Short to supervise the two departments until they could find a new chief.

Also similar in the four communities is the way they split the costs and benefits for the one chief.

Short said he called Kittery officials after getting settled in and urged the two towns to continue operating separate departments, but hire only one chief.

He knew better than to suggest a merger, but finding the job doable because of his state experience, he offered to stay on and keep the arrangement going.

But with history as a guide, Kittery councilors hired a new police chief, who lasted about one year. It was then the Kittery officials' turn to call Short.

Short said he is talking to police chiefs throughout the state and urging them to push for change. Although his advocacy makes some chiefs apprehensive, he thinks towns could try the new model through attrition as chiefs retire – or sooner, when police chiefs resign or otherwise don't stick around.

"An overall merger is a tough pill to swallow" for both the public and their elected officials. "But if we can reduce some redundancies, share our resources and improve our service" there is good reason to try it, Short said.

Short is able to assign officers from either department to help where the need is greatest. The two detectives in Kittery now help the one detective in Eliot, too.

"I really think this is the way to go," said Short, who served as Eliot chief for eight years before the new arrangement. "But it's only going to happen if police chiefs take the lead on this and not wait until a town is in crisis and needs a police administrator."

He added: "It should be the first thing we think about, not the last."

Short offered to travel across Maine to talk to elected officials about the successful experience of his two department operations and to encourage other towns to give the idea a chance. ■

filled by the sergeant, and promoting another officer to back-fill the sergeant's position. A dispatcher was then promoted to an officer.

In Mount Desert, Willis was keen on training and Lunt said he never received a complaint about the chief from an officer or a resident. Willis was working to develop new town policing policies – and he loved walking a beat whenever possible and drinking coffee with residents at a local hangout known as “the second town office.”

The Bar Harbor situation “was fairly personal,” Willis recalled recently. “There were a lot of distractions. The politics of it were pretty overwhelming.”

As Willis pulled away from the idea, Lunt pushed it. In the end, the manager did not twist the police chief's arm, but he bent it hard, Willis said with a laugh.

“Durlin really wanted to help out a neighbor,” Willis said, “and so at the time I said ‘OK, I'll make it work,’ never thinking that at some point I would be (the official) chief.”

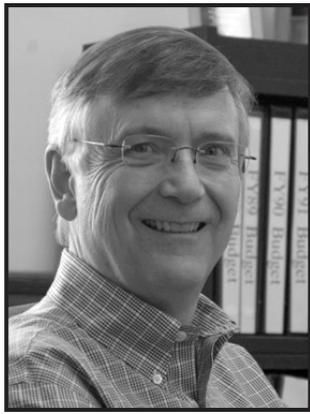
At the time, Reed was himself embattled over placing the police chief on leave, and then firing him after a public hearing. But having managed the town for nearly three decades, and provided key leadership for years as a League of Towns director, Reed soldiered on and eventually called Lunt for help.

“Perpetrators don't respect town lines,” Reed said. “This makes a lot of sense. In the long run, there will be lower costs and better service.”

Reed, interim manager of the Town of Tremont since June, has served on the League of Towns board for years. He said elected and appointed officials in the League, which now includes the City of Ellsworth, are always talking about ways they can do more together.

But the League and its nine members (plus Acadia National Park) have already collaborated at so many levels they were running out of ideas – and looking for opportunities.

“Collaboration is easier if you take one step at a time,” Reed said.



Dana Reed

Photo: Rob Levin-Mount Desert Islander

According to Paradis, Reed deserves much of the credit for what unfolded after his call to Lunt. “We wouldn't be where we are without Dana,” Paradis said. “He did a great service in initiating this.”

Lunt, meanwhile, praised new Bar Harbor Town Manager Cornell Knight for supporting the idea and shepherding the negotiations to a successful end. “I am very grateful for that,” Lunt said.

Remembering the coldness and isolation of the past, Lunt is hopeful

the two police forces can continue to forge new ways of doing things better together.

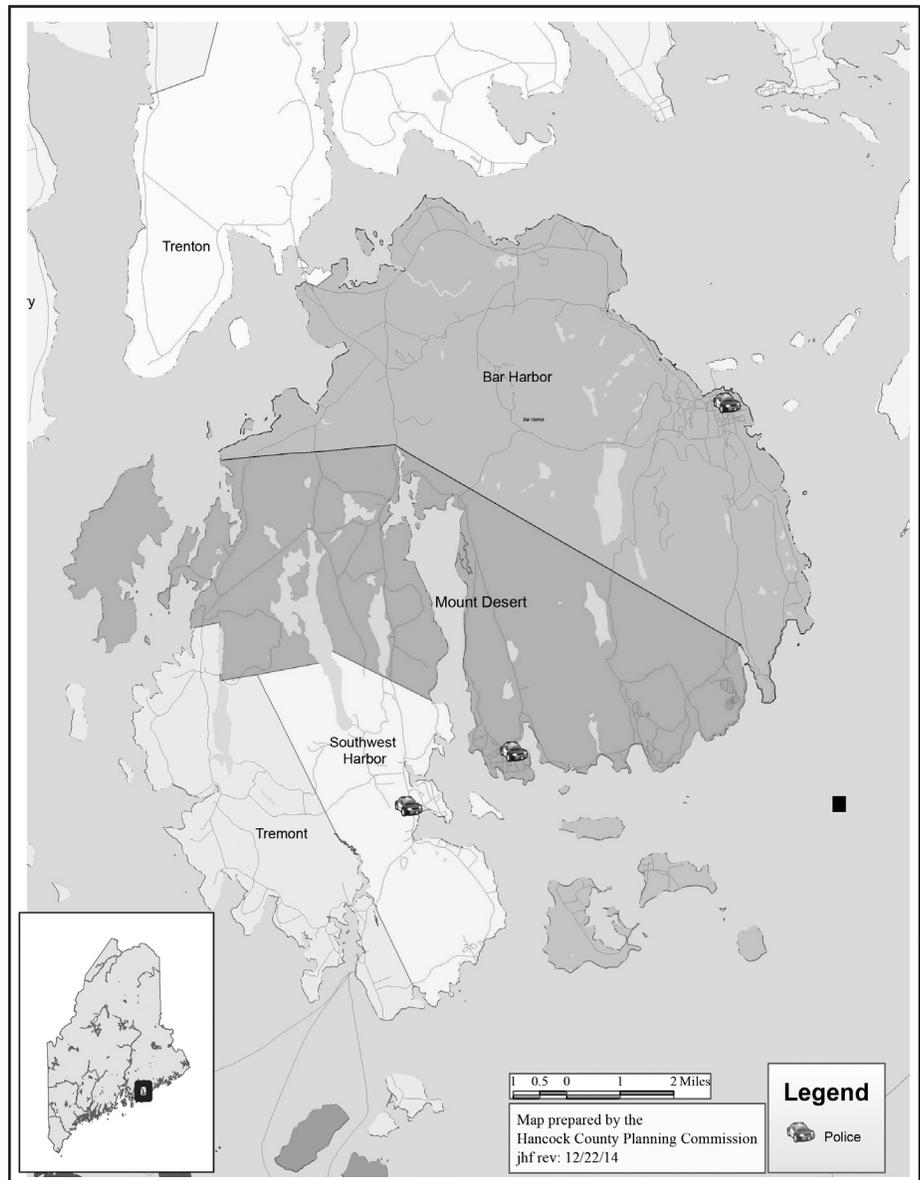
And the public's reaction? “It was remarkable in its un-remarkability,” Lunt said. “No one even seemed to notice.”

Even this past summer, as the annual two million visitors trekked through Acadia, Lunt said he didn't receive a single complaint.

“Nobody said boo,” he said.

Chief settles in

During the first six-month interim stint, Willis only restructured Bar Harbor personnel enough to ensure the department functioned well while he took on all of the paperwork and administration required of a chief.



This map shows the municipal boundaries on and near MDI. (Submitted photo)

But when he was approached to continue for another six months, Willis said he needed to begin making some changes in order to ensure the two departments, while still separate, functioned well together. That would require uniform training, policies and expectations for all of the officers under his command.

Having talked one-on-one with each Bar Harbor officer when he first started, Willis was able to restructure the Bar Harbor force to put people in positions they liked and in which they would perform well.

Willis sensed what Councilor Paradis knew: The officers wanted more responsibility, training and potential for personal and professional growth.

“They had to really take on more responsibility” – and quickly, Willis said of the Bar Harbor officers. “They really welcomed that. They wanted more responsibility.”

“Policing is helping people resolve problems,” Willis added. “We are very well represented that way by both departments.”

After the restructuring, morale seemed to climb; officers became more engaged on the streets and with

tourists. They never complained to Willis as he began scheduling the two forces to ensure both towns were fully covered, regardless of town boundaries.

Willis remained uneasy he said. He was in the middle of a second, six-month interim stint without any defined role or job description. The councilors and selectmen from each town had put their faith in the concept and the two police forces, and left their appointed leaders to make it work or decide it would not.

“I still did not have a defined role; we kind of had to define our own,” Willis said. Once the first “tense” six-month period was over, Willis said the

department was “ready to move on” to a better future.

“I finally decided the public just wanted us to run the PD and keep it operational,” Willis said. What the public got, though, was improved public safety.

Officials from both towns give Willis and the police the credit for making it work. Willis’ personality, temperament, leadership style and sense of fairness have earned him accolades from all areas of the island.

“I think I am invested in it now,” Willis said. “It’s more manageable and I feel the support of the council and selectmen. I think it’s a great challenge. I do feel challenged by it.” ■

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Peter has more than 25 years of experience as a municipal bond lawyer planning and executing transactions to make the preferred rates of municipal bonds available for qualified private development. He acts as bond counsel for towns, cities, counties, private and public sanitary districts and other units of government to find creative and effective ways to build schools, highways, water treatment plants and other forms of infrastructure. Peter is recognized in “The Bond Buyer’s Municipal Marketplace” and approved as bond counsel by the U.S. Department of Agriculture, Maine Municipal Bond Bank, Maine Health & Higher Education Facilities Authority, Finance Authority of Maine and most of the state’s commercial banks.

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The Municipal RISK MANAGER

JANUARY 2015

A Publication of the Maine Municipal Association

Stand Up to Winter

It's here again, WINTER – snow, sleet, ice, freezing rain and again this year, too many of us will fall and be injured. We don't have to; "stand up to winter" by following these suggestions:

- Take small careful steps. Be aware of changes in conditions or of walking surfaces.
- Use handrails and any solid, stationary object that will support you.
- Wear proper footwear for the conditions. Use ice cleats when possible. Carry "inside footwear" and change when you are inside.
- Stay on designated walkways and paths; don't take shortcuts across areas that are not cleared of snow and ice.
- Don't carry large items while on snow or ice. If you must - shovel, sand and salt first. Make sure you can see where you are going.
- Wear gloves; don't walk with your hands in your pockets. Keep your hands available to maintain balance and to protect yourself if you fall.

In addition to the precautions listed above that all of us can do, there are administrative controls that should be implemented:

- Establish a plan for removal of snow and for salting and sanding of driveways, parking lots and pedestrian travel ways. Identify high hazard areas, assign responsibility and monitor conditions.
- If all entrances cannot be cleared before employees arrive, designate an entrance to be cleared for use by first arriving employees and require employees to use it.
- Place containers of sand/salt near entrances and encourage employees to



use it when they identify an area as unsafe.

- Protect entrances and lobbies with matting that absorbs water. Clean up water from snow melt and post caution signs to remind employees of wet floors.

- Train employees to recognize slip and fall hazards and how to prevent falls. Provide newsletters, posters and verbal reminders. Get employees involved in developing your "winter plan."

Preventative Steps for next Winter

- Make note now of areas that are high risk or habitual problems. Example – a section of walkway that gets slippery every time there is drainage followed by cold temperatures. Investigate ways to

"engineer out" the hazard by rerouting drainage, relocating the travel path or by other means.

- Provide non-slip footwear to designated employees such as police, fire, public works and custodians. Consider submitting a MMA Safety Enhancement Grant for May. 🏠

**Stand up to winter –
Don't Fall!!**



Liability for Sidewalk Defects

DrummondWoodsum
ATTORNEYS AT LAW

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84 Marginal Way, Suite 600, Portland, ME

Like liability for road defects, liability arising from defects in sidewalks is governed by several provisions of Maine law. On their face, some of these statutes appear entirely inconsistent with one another, with one imposing liability on a municipality for a defect while another provides a seemingly unlimited grant of immunity for defects. Despite the apparent contradiction, however, the Law Court has held them to be compatible, with each controlling in a specific set of circumstances. This article will try to delineate which

laws apply to the different factual situations with which municipalities are commonly faced.

Our state courts often declare that the common law doctrine of sovereign immunity for governmental entities was entirely displaced by the enactment of the Maine Tort Claims Act in 1978. This is not entirely accurate, however, as the enacting legislation for the MTCA carved out an exception for those specific statutes that had

Story Continued on Page 18



previously been enacted over the years to abrogate sovereign immunity for specific government activities. In those particular situations, the MTCA did not supplant the previously enacted laws. See 14 M.R.S.A. § 8113(2). Examples include the sewer statute, the culvert statute, and, most germane to this discussion, the so-called highway defect, or pothole, statute. Statutes governing liability for damages under the Local Highway Law, 23 M.R.S.A. § 3651, *et seq.*, pre-date the enactment of the Maine Tort Claims Act, and thus offer a remedy entirely outside the MTCA for injuries caused by defects in town ways.

The MTCA provides a general grant of immunity to municipalities. See 14 M.R.S.A. § 8103. This general grant of immunity is subject to specific exceptions, though those exceptions are narrowly construed by the courts. See § 8104-A, as modified by § 8104-B (the exceptions to the exceptions). § 8104-A provides an exception to govern-

mental immunity for a governmental entity's "negligent acts or omissions arising out of and occurring during the performance of construction, street cleaning or repair operations on any highway, townway, sidewalk, parking area ... including appurtenances necessary for the control of those ways" This exception to immunity for construction, street cleaning, or repair operations has been interpreted by the Law Court a number of times in which roads have been at issue, but not sidewalks. These cases hold that a two-part test must be applied to any particular injury case to determine whether the exception to immunity applies. First, the injury must be caused by a condition or defect that stems from the construction, cleaning or repair operation. Second, the injury must arise during the course of those activities. At the Law Court, cases have more commonly involved disputes over whether or not the activity was still ongoing at the time of injury rather than whether the activity was the actual cause of the injury. See, *e.g.*, *Dubail v. Maine Dep't of Transportation*, 711 A.2d 1301 (Me. 1998); *Paschal v. City of Bangor*, 747 A.2d 1194 (Me. 2000). Because construction or repair activities, whether on a road or on a sidewalk, can take weeks or even months to complete, a municipality can be exposed to potential liability for a lengthy period of time during such projects.

The very same section of the MTCA that confers municipal liability for negligent conduct during construction, street cleaning or repair operations also provides immunity for any "defect, lack of repair or lack of sufficient rail-

ing in any highway, townway, sidewalk, parking area ... or in any appurtenance thereto" when such activity is not taking place. See 14 M.R.S.A. § 8104-A(4). As a result, an injury caused by a defect in a sidewalk, such as a person injured by tripping over a misplaced brick, will not cause liability to be imposed on the municipality unless the injury occurs during the performance of construction, cleaning or repair operations on the sidewalk. This is only the case, however, for claims that are brought under the MTCA.

As noted above, the MTCA is not the only provision in Maine law that can provide a basis for municipal liability for injuries caused by defective sidewalks. Despite the MTCA's blanket immunity for latent defects, 23 M.R.S.A. § 3655 provides: "Whoever receives any bodily injury or suffers damage in his property through any defect or want of repair or sufficient railing in any highway, townway, ... may recover for the same in a civil action" Because the enactment of the MTCA did not affect the continued viability of this previously enacted provision of the Local Highway Law, § 3655 presents entirely independent authority for the recovery for injuries caused by latent defects in sidewalks. Liability under § 3655, however, has its own pre-conditions and damages limitations that are also totally unrelated to those found in the MTCA. Any claim brought under § 3655 must be brought within a one-year statute of limitations, compared with the two-year statute of limitations that governs claims brought under the MTCA. In the case of a town, damages recovered under § 3655 cannot exceed \$6,000. In the case of fatalities, that damage limitation under § 3655 is raised to \$25,000 per individual claim, and \$300,000 in total for a single occurrence. While multiple fatalities are obviously more likely to be encountered in a road defect case rather than a sidewalk defect case, a serious fall caused by a defect in a sidewalk certainly has the potential to cause someone's death. This damage limitation of §3655 contrasts with the MTCA's limitation of \$10,000 in recoverable



The Municipal Risk Manager

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

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Story Continued on Page 19

Sidewalks *(cont'd)*

damages against any individual government employee and \$400,000 against the governmental entity as a combined single limit for one occurrence.

Finally, § 3655 may only be used to impose liability where the municipality had 24 hours' actual notice of the defect or want of repair, and failed to correct it. There is no such specific advance notice requirement for sidewalk cases brought under the MTCA, presumably because the fact that the defect was caused by the entity's own construction, cleaning or repair activities should provide such notice to the one performing the activities. The notice required by § 3655 in the case of a municipality requires that the notice be given municipal officials or the road commissioner of the town, or any person authorized to act as a substitute for either the municipal officials or road commissioner. If the injured person had notice of the defective condition prior to the time of the injury, however, that person cannot recover against the municipality unless he/she has personally notified one of the municipal officials of the defective condition in the town way. Any person seeking to use § 3655 as a means to recovery must also provide the municipality with notice of their claim within 180 days of the injury, just as in a MTCA case.

The scant case law that addresses sidewalk claims brought under § 3655 sheds almost no light on what comprises an actionable "defect" in a sidewalk. Slippery conditions caused by snow and ice, a commonly encountered condition, cannot be the basis of an action against a municipality. See 23 M.R.S.A. § 3658. Poor lighting has been raised in a few cases where people have fallen at night on sidewalks outside public buildings. Such cases have been argued both as defects of the sidewalk itself or as defects of the municipal building where the outdoor lighting was affixed to the building. Neither approach has been successful. For purposes of the MTCA, the courts have held that insufficient lighting is not going to be considered beyond that needed to illuminate external stairs, porches, etc.,

which qualify as appurtenances to the municipal building itself, and have refused to extend liability for defective lighting beyond the appurtenance to the adjacent sidewalk areas. See *Swallow v. City of Lewiston*, 534 A.2d 975 (Me. 1987). They have also held that a defect in lighting over a sidewalk is not a defect in the sidewalk itself, presumably dooming any effort to use § 3655 to avoid the limitation of MTCA-based claims. See *Donovan v. City of Portland*, 850 A.2d 319 (Me. 2004).

In the most notable case for § 3655 before the Law Court, the majority of the case is concerned with the determination of the type of evidence that may be used to circumstantially prove that a defect existed. In *Simon v. Town of Kennebunkport*, 417 A.2d 982 (Me. 1980), plaintiff alleged that he fell on a sidewalk that was uneven and inclined. Plaintiff also contended this location had been the scene of approximately 100 prior falls in the three years from the date of construction of the sidewalk to the date of plaintiff's fall. The plaintiff sought to introduce evidence from two merchants, in front of whose store the sidewalk passed, who were prepared to testify that they observed a person fall on that area of the sidewalk nearly every single day. The trial court refused to allow that testimony, saying it was irrelevant because it was not probative of the condition of the sidewalk at the time of plaintiff's fall. That ruling is hard to understand, given that the court was not concerned with something transient like a patch of ice that would not have been the same at the time of two different falls, but was based instead on the unevenness and steep incline which presumably did not change from the time of one fall to the next.

In *Simon* the Law Court found that the trial court had committed error by excluding that evidence, finding that testimony about the other accidents would have shown that they occurred under circumstances that were "substantially similar" to those of the case at hand, and should have been admitted. It appears from the decision that the town filed its own cross-appeal regarding the sufficiency of the notice it had

under § 3655, but it dismissed that appeal without explanation prior to the Law Court's decision. As a result, it is not possible to determine what the town had initially raised as a lack of notice issue, which it later abandoned. But one might speculate that if there truly were more than 100 prior falls at that same location, the odds are pretty good that the town received at least one prior complaint about the alleged defect and thus was on notice of it.

In summary, a municipality is immune for any claim arising out of defects in a sidewalk under the Maine Tort Claims Act, unless the injury was caused by, and arose during, construction, cleaning or repair operations on the sidewalk. A municipality is not immune for claims brought under 23 M.R.S.A. § 3655 for injuries caused by defects in sidewalks, but a recovery under that statute requires that a municipality have 24 hours' advance notice of the defect, a notice of claim within 180 days of injury, a suit commenced within one year, and is then still subject to the damages limitation discussed above. While the Maine Tort Claims Act did entirely replace the common law doctrine of sovereign immunity *as it existed at the time of its enactment in 1978*, it is important to recognize that the legislature had for over 100 years prior to that time already abrogated sovereign immunity on an ad hoc basis with statutes targeting very specific government activities, such as defects in town ways, including sidewalks. Such statutes still control in their discrete areas, and operate totally outside of the immunity/liability scheme found in the Maine Tort Claims Act. ■■

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Workers Compensation Payroll Audits

Once a year, payroll audits are performed on the members of the Workers Compensation Fund. The auditors will work with you to analyze, review and compare the *estimated* annual payroll projections (which you report to us in October for the following Fund year as part of the renewal application) to the *actual* payroll totals at the end of the Fund year. You may be contacted by Risk Management Services who handles some audits in-house, or by one of our contracted auditors at GEM Associates who will gather the data and forward it to us to process. It is always appreciated when all the necessary paperwork is available for the auditor to review, or if requested, is mailed promptly to them for review. The State of Maine mandates that all MMA Workers Compensation Fund audits be completed by May 1st of each year.

If the audit reveals that a member's estimated payroll exceeds the actual payroll, the member will receive a refund. The converse of this is also true. If the auditor finds that payroll estimations are lower than actual totals for the year, the organization will receive an invoice for the difference.

We understand it is difficult to predict the future when completing the application; however, there are several factors that members can consider to help ensure a positive audit experience. For example:

1. Proper classification of employees

Each workers compensation classification code has its own rate for the purpose of calculating estimated contributions. Be sure to classify all employees in the correct payroll classifications. If you are not sure about where an employee should be classified, contact your underwriter here at the MMA Workers Compensation Fund or your local agent.

2. Payroll separation — keep detailed payroll records

Many times, an employee can be clas-

sified under two or more classification codes, depending on the nature of the job. This allows for payroll separation among the different classifications. Proper documentation to support payroll separation is required. This includes detailed payroll records documenting the number of hours each employee spends in each separately classified activity. Failure to provide adequate payroll records will result in the total payroll being placed in the higher rated classification.

3. Plan for temporary/seasonal help

Staffing requirements, such as the need for hourly employees or the number of personnel needed, can increase/decrease during certain seasons for some departments. Parks and Recreation may find a need to increase staff and/or hours in the summer months, while winter months may require additional help for street cleaning in Public Works. Remember to plan for these fluctuations in seasonal staff needs when filling out your application.

4. Certificates of insurance for contract workers

As a reminder, should your entity employ subcontractors during the year, it is imperative to obtain a certificate of insurance to show coverage for workers compensation-related incidents

or an approved "Predetermination of Independent Contractor Status" (WCB 266). If your entity does not obtain and keep records of certificates of insurance from all subcontractors, the auditor will presume these workers are your employees and will include them in your payroll totals and you will be charged for them.

5. Plan for the Future

Whenever possible, plan for any upcoming needs, promotions or expansions. Adding employees due to increased labor demands or promoting an employee from part-time to full-time status are examples of factors that can affect your workers' compensation contribution/premium.

6. A Helpful Tool for Renewal

It is a good practice to review audits from prior years when filling out a renewal application. By reviewing the prior audits you can see how your employees have been categorized in previous years which can help you ensure they are categorized correctly for the upcoming audit.

If you have questions about audit details, proper classification codes for employees or for any other area where we can be of assistance, please contact the MMA Risk Management Services Underwriting Department. We are here to help. 🏠

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Please contact a member of Risk Management Services Underwriting staff at 1-800-590-5583 for questions or additional information.

'Community paramedicine' emerges with pilot programs

The idea started in Maine and makes sense in a state with such a rural nature, proponents say. Still, obstacles need to be overcome.

By Lee Burnett

As director of Maine Emergency Medical Services, Jay Bradshaw's professional life is dedicated to improving the professionalism of ambulance crews. But he provides an anecdote from his personal life to illustrate a gap in service that he and others are trying to fill.

Following his recent hip replacement surgery, Bradshaw was required to visit his doctor's office for blood tests.

"Riding in a car immediately after hip surgery is very uncomfortable – and dealing with icy steps, winter roads, and snow covered parking lots is even more painful and dangerous," he said.

It would have been more comfortable and convenient to get the test at home, although that routine procedure is not covered by visiting nurse services. However, it is a service that EMTs could easily provide. "It's a simple test... It's something that could be done by a paramedic," said Bradshaw.

Getting blood tests – and all manner of routine health care done at home – is the future of emergency medicine as Bradshaw and others see it. It's called "community paramedicine," and it's emerging all over the country.

Maine is a laboratory for how community paramedicine will be rolled out in rural areas of the country:

- The Maine Legislature in 2012 authorized pilot programs in 13 Maine communities – primarily in rural areas

– to expand routine follow-up care by paramedics and gather data on whether it results in reduced emergency room visits and hospital readmission rates.

- Eight fire departments in the greater Portland area earlier this year secured a \$225,090 federal Assistance to Firefighters grant for training in anticipation that reimbursement will soon be forthcoming for community paramedicine.

Though "community paramedicine" has been gaining steam with the advent of the Affordable Care Act, it was first coined by a Maine ambulance director more than a decade ago. It promises not only the convenience of home-based care, but dollar savings to the health care system, says Scarborough Fire Chief B. Michael Thurlow, one of the leading proponents of the shift.

"The whole idea is, instead of paying Scarborough (fire department) \$1,000 to send an ambulance with advanced life support to transport a patient to the hospital, pay us \$200 to provide post-op health care so the patient isn't readmitted to the hospital," said Thurlow. "Instead of paying a lot of money for the most expensive care, spend less money so we can be proactive in the community."

The sticking point right now is that most states prohibit EMTs from providing care beyond stabilizing patients and transporting them to a hospital emergency room.

"Even if it's a relatively minor

(health problem), we can't transport to the doctor's office or to an urgent care center. We have to transport to ER, which is the most expensive place to get treatment," said Thurlow, who is spearheading the paramedic training in the Portland metro area.

Those laws are under assault all over the country. Minnesota was the first to establish reimbursement for community paramedicine services through the Medicaid program.

Maine's rural nature

Community paramedicine is said to be particularly suited to rural Maine. Not only do rural communities have a disproportionate share of elderly, poor and chronically ill residents, but they have difficulty sustaining high quality EMT service under current funding models, says Kevin McGinnis, who coined community paramedicine in an article in Rural Health News in 2001.

Back then, McGinnis was director of Ambulance Services at Franklin Memorial Hospital in Farmington. Today, McGinnis is the state community paramedicine coordinator for the National Association of State EMS Directors.

McGinnis calls the bind that rural communities face "the paramedic paradox." It goes like this: The further a community is from a hospital, the more likely residents will need higher levels of EMT capability and the less likely it is that this capability will be available. That's because the low call volumes in rural lead to high turnover in skilled EMTs and weak finances.

Lee Burnett is a freelance writer from Sanford and regular contributor to the Maine Townsman, leeburnett_maine@hotmail.com.

Collaboration Corner is a regular feature in the Maine Townsman, highlighting ways that municipalities work together to become more efficient and better serve citizens.

“They (rural areas) just don’t have the call volume,” McGinnis explained.

McGinnis says community paramedicine holds the potential to fix multiple problems at once: extending care where it is most needed; shoring up rescue squad finances; and, squeezing savings out of the health-care system by reducing unnecessary runs to the emergency room.

“This is why I thought of doing it,” said McGinnis. “It seems like a really good match.”

McGinnis has seen community paramedicine evolve from a fringe concern to a mainstream topic. It’s taken a long time, chiefly due to the slow work of convincing other health-care providers that community paramedicine poses no territorial threat to other providers. Those concerns have largely been addressed. The Centers for Medicare and Medicaid Services (CMS) has started to award innovation grants to community paramedicine and McGinnis believe it’s only a matter of time before reimbursement is

available.

“I’m optimistic,” he said. “When CMS goes, everyone else will go – Blue Cross/Blue Shield, Aetna.”

The pilot programs in Maine are exploring different facets of community paramedicine. Some pilots work under the direction of an emergency room with patients from multiple practices. Others work under the direction of a single primary care provider. Both private and public ambulances are participating. Fall prevention, education and follow-up care are some of the areas of focus.

“The biggest piece for us is education,” said Robert Posick, Calais Fire Chief. Many congestive heart failure and diabetes patients are overloaded with information when they come home from the hospital but after a while the message and the habits begin to slip, he said.

“We want to educate them on what they need to do to be compliant,” Posick said. “We never want the patient to use us as a crutch. We want an end date to receive a positive benefit from us. It’s designed for folks who fall through the cracks.”

Currently, the ambulance services are making the home visits as a community service. It prepares them for the advent of reimbursement and it’s within their mission, but it’s clearly not sustainable over the long term. As McGinnis warns: “If reimbursement isn’t

changed, the whole concept of community paramedicine will peter out.”

The race is now on for the pilot projects to compile data and for the state EMS to crunch the numbers and document that the home visits actually reduce ambulance runs to the emergency rooms and hospital readmission rates. “Anecdotally we can say ‘yes,’ But we do not have hard data yet,” said Timothy Beals, executive director of Delta Ambulance in Waterville.

Almost any EMT can cite patients who could have been treated at home, but were transported to a hospital ER because there was no other option. Freeport Fire Chief Darrell Fournier estimates that it happens 150-200 times a year in Freeport (which goes on 25,000 runs a year). He cites a recent patient taken to the ER for dehydration.

“By the time we got to the hospital the patient revived because we had administered IV fluids. The patient was released before we even filled out the paperwork. There has to be a lot more effective use of resources,” said Fournier.

Possible expansion

If the data shows overall savings, the Maine Legislature could expand the pilot programs. In the meantime, rescue squads not involved with the pilots can prepare themselves by getting trained and assessing their own com-



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munity's needs. It may involve working with public employee unions on contract language. Do EMTs currently have down time in the station when they could be making home visits?

"Who are the health care providers in your area? What are they doing?" asked EMA state Director Bradshaw. "Assess the unmet needs. It could be there are already considerable resources and your community doesn't have a need."

Ultimately, community paramedicine will lead to better communication among health care providers and more integration of the health care system, said Amy Madden, a Belgrade primary-care provider involved in evaluating the pilots. For example,

an EMT making routine home visits can assess how well a patient is taking care of himself or herself and provide that information to the primary care provider.

"It makes an enormous amount of sense. They see a lot how a patient lives," Madden said. "Are their pill bottles strewn around or nicely set up?"

And reports of bona fide emergencies also get relayed to the primary care provider.

"If someone has fallen at home, that's an indication that something's not right. It's something I'd like to know, but (currently) we don't have a mechanism for that report to get back to primary care provider," said Madden. ■

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On-site training in a variety of topics.

Testing

Entry level police and fire testing.

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.

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

 60 Community Dr.,
Augusta, ME 04330

- 2015 -

Elected Officials Training Opportunities

Elected Officials Workshops

Who Should Attend:

This workshop is a "must" for newly elected and veteran officials-councilors & select persons-as well as a wonderful opportunity to learn key points of your new position while networking with officials from around the state. (Qualifies as Maine FOAA Training.)

- What are our rights and duties as officials?
- Can we hold multiple offices?
- Which of our meetings are open to the public?
- Must we have an agenda and take minutes?
- What ordinances can we enact?
- What authority do we have over the schools?
- What are our liabilities and immunities?
- What is a disqualifying conflict of interest?

As part of our ongoing efforts to bring training to our members, MMA is pleased to announce that the Jan. 28th course will be offered in two formats: In classroom and remotely at the Northern Maine Development Commission in Caribou. Attendees can participate via ITV Technology by viewing the presentation remotely. ITV broadcasting allows for live viewing as well as interactive participation with the attendees.

A perfect opportunity for elected officials to take advantage of the expertise that the Maine Municipal Association has to offer, attain a better understanding of their role as public officials, and stay abreast of ever-changing local government responsibilities and issues.

Course meet state FOAA training requirements (Right to Know).

Roles of Elected Officials & Municipal Managers

Who Should Attend:

This four-hour course is presented by the MMA and is designed for Elected Officials and Municipal Managers and Administrators that focuses on the differing roles and responsibilities of these positions. Topics include Key Responsibilities, Legal Requirements, Personnel Issues, Communication and Goal Setting. This is an excellent opportunity to come as a board along with your municipal manager.

Managing Freedom of Access Requests

Who Should Attend:

This timely workshop is aimed at helping municipal staffs, newly designated "Public Access Officers" and elected and appointed officials understand Maine's Freedom of Access Act, why FOAA requests are filed and how to handle them properly.

Course meet state FOAA training requirements (Right to Know).

Online registration is easy!

<http://www.memun.org/TrainingResources/WorkshopsTraining.aspx>

Elected Officials:

Dates & Locations:

Augusta – 1/28/2015

MMA – 60 Community Dr., Augusta, ME 04330

Caribou – 1/28/2015

Live Video Conference

Northern Maine Development Commission
11 West Presque Isle Rd., Caribou, ME 04743

Saco – 04/08/2015

Ramada Inn – 352 North St, Saco, ME 04702

Lewiston – 04/30/2015

Ramada Inn – 490 Pleasant St., Lewiston, ME 04240

Machias – 05/14/2015

University of Maine at Machias
116 O'Brien Ave., Machias, ME 04654

Bethel – 06/30/2015

Bethel Inn - 21 Broad St., Bethel, ME 04217

Waldoboro – 7/29/2015

Soule-Shuman VFW Post #4525 - 50 Mill St.
Waldoboro, ME 04572-6128

Roles of Elected Officials & Municipal Managers

Date & Location:

Gray – 12/8/2015

Spring Meadows - 59 Lewiston Rd., Gray, ME 04039

Managing Freedom of Access Requests

Dates & Locations:

Augusta – 3/24/2015

MMA - 60 Community Dr., Augusta, ME 04330

Saco – 10/20/2015

Saco City Hall Auditorium - 300 Main St., Saco, ME 04072



Maine Municipal Association

60 Community Drive – Augusta, ME

1-800-452-8786

www.memun.org

Welcome to the Maine Resource Recovery Association

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

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

Some of the goals of the organization are as follows:

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

A number of the presentations from the 2014 Maine Resource Recovery Association Recycling & Solid Waste conference are now available for download:

<http://www.mrra.net/publications/>

**Maine Recycling and Solid Waste Conference - Disappearing Waste: Rhetoric or Reality – save the dates:
April 27-28th 2015 Point Lookout, Northport, Maine**

Our Mission

The Purpose of Maine Resource Recovery Association is:

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

The Goals of the Association

- Promoting communication and information exchange between Association members and markets, equipment suppliers, State and Federal Government, and other State and national associations, as well as information exchange among members.
- Compiling and development of other information relevant to the education and technical assistance of Maine solid waste management and recovery programs.
- Promoting market development and providing cooperative marketing opportunities.

To Join our mailing list, go to www.mrra.net and enter your email address and hit Join.

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Email: victor.horton@mrra.net

Also see next months Townsman ad for the Annual Backyard Composting sale details and how to sign up

Election went smoothly with high turnout, absentee voting

However, municipal clerks say there are several ways the process could be further improved. Opinions are mixed on 'early voting,' particularly if mandated.

By Douglas Rooks

Maine is a state where elections are serious business. It's regularly near the top of state voter turnout, and at an estimated participation in 2014 of 59 percent, led the nation.

Town and city clerks also take elections seriously, in part because they have to. Maine's election law allowing unlimited absentee balloting, while providing great convenience for voters, places a formidable burden on clerks' offices.

The absentee ballot system involves a significant amount of paperwork. Between the initial request for a ballot to the counting on Monday and Tuesday of election week, clerks and election workers physically handle each absentee vote at least five times, said Bangor City Clerk Lisa Goodwin.

"It's just about all we do for four weeks before a major election," she said. "It's huge. Everything else pretty much stops."

Merton Brown in Kennebunk says that even with the ballot-counting machines now in use, election night is almost guaranteed to be a long one, particularly when – as in the case in Kennebunk, York, and other towns – questions for municipal issues also need to be counted.

"In Kennebunk, we might be feeding 15,000 paper ballots in the machine that are submitted as absentees. In York, it's even higher."

That's why counting often doesn't conclude until 3 or 4 a.m., and why Brown – like other clerks – doesn't take a lunch break for at least a month before a major election. On Election Day, he said, "We've worked 23 straight

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



Lisa Goodwin



Merton Brown



Patti Dubois



Tracey Stevens

hours, with barely a bathroom break."

Alleviating that paperwork logjam has seen a wide variety of proposals in recent legislative sessions, with more expected in the current one.

One change embraced in many other states, but not permitted under the Maine Constitution, is early voting – allowing voters to cast their ballots in the same way they do on Election

Day, but doing so in the weeks before an election.

According to the National Conference of State Legislatures, 33 states and Washington, D.C. now allow some form of early voting, while 20 states require a reason to vote absentee. Some 27 states, including Maine, allow unlimited absentee voting, with no reason required.

The most serious effort to date to allow early voting here came in the last session, when LD 156, sponsored by Rep. Michael Shaw (D-Standish) and co-sponsored by Sen. Brian Langley (R-Hancock County) was considered.

In its final form, the bill would have authorized lawmakers to create an early voting system if voters ratified a constitutional amendment for that purpose. Two-thirds of both House and Senate were required. On an initial vote, the Senate agreed, 24-11, but after a House vote fell short, by 87-57, the Senate also rejected the measure. Most Democrats supported the amendment, while most Republicans opposed it.

Because it would have involved

eventual ratification by the voters, the Maine Town and City Clerks Association took no position on LD 156 and offered no testimony at the public hearing.

But many individual clerks, particularly in the larger towns, are enthusiastic supporters of early voting.

For Merton Brown, who's been Kennebunk's town clerk for 40 years, and has overseen 11 presidential elections, it's almost a no-brainer.

Identical to absentee

"It's positively silly that it's not allowed in Maine," he said. He sees early voting as nearly identical to the cumbersome absentee ballot process: "The only difference for the voter is

that instead of inserting their ballot into an envelope" – where it's set aside to be counted later – "they can feed it directly into the voting machine."

That's certainly true for the absentee voters who pick up and return their ballots directly to the town office – an estimated 30-50 percent, depending on the community involved. But for those who return ballots by mail, and those who may be physically unable to vote in person, absentee balloting may need to continue.

Even clerks who support early voting recognize that not all towns will want to offer it.

"In smaller towns, it would require additional staffing they may not want to provide," said Lisa Goodwin. "In Maine, it's definitely not one size fits all."

One of the reasons why early voting seemed a real possibility, despite the high hurdle for approval of a constitutional amendment, is that the Secretary of State's office had already run a pilot project for early voting, most recently for the 2009 off-year election.

Patti Dubois, now the Waterville city clerk, then had the same role in Bangor, one of the test sites. The state provided special machines that could tabulate votes and provide a daily count to the Central Voter Registry, the state's central database. Each machine was kept in a secure location similar to the way ballot boxes are kept during the pre- and post-election periods.

"It was popular with the voters," Dubois said. "We had a very favorable response, and no complaints."

She also notes that, on a wider scale, early voting might require additional investments in suitable equipment. For the pilot project, the state bore the expense for the necessary voting machines.

The issue of ballot security is important to voters as well. People sometimes wonder what happens to their absentee ballots before it's counted, said Goodwin. "Just to safeguard that ballot, the integrity of that person's vote, is key."

Early voting could have had that potential in Maine, but it isn't going to happen just yet.

In some of the largest communities, absentee balloting is seen as not much different than early voting. Portland Clerk Katherine Jones said that,

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during the five-week absentee balloting period, her office sets up a separate, adjacent room at city hall for that purpose, leaving the clerk's office free for regular business.

Election workers process applications there and receive completed ballots. It often takes time – there are many questions from voters – but with several staff members on duty, that can be readily accommodated.

Using flex time

In the pre-election period, she also employs flex time for the workers who do the bulk of the absentee ballot processing. They come in three hours later for their shifts, so they are available for the special evening hours when most voters come to city hall.

Portland had a huge influx of absentee ballots for the 2008 and 2012 presidential elections, including more than 12,000 the latter year. This year, absentees were about 6,500, a relatively small percentage. But in towns like Kennebunk, absentee ballots can be cast by more than half the electorate.

John Myers of Buxton, current

president of the Maine Town & City Clerks' Association, sees both sides of the early voting/absentee voting debate. He said that early voting would be a boon for some communities, but that others wouldn't use it unless it were mandatory – not likely an approach the Legislature would take.

Myers said that the most helpful thing lawmakers have done recently is to set the Thursday before the election

as the deadline for absentee applications. It was part of legislation enacted in 2011 that also would have ended Election Day registration. The Election Day provision was repealed in a people's veto referendum that November, but the earlier deadline for absentee requests remains in place – something appreciated by clerks around the state.

Even though absentee ballots can still be submitted until the polls close,



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

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

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



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and can't be counted until Election Day, being able to process them earlier and do the necessary cross-checks is seen as a big help. The bulk of absentee votes come in before Tuesday in most communities. Allowing earlier process, Lisa Goodwin said, "would be a godsend."

Tracy Stevens, the Freeport town clerk who chairs the Clerks' Association's Legislative Policy Committee, says the organization will recommend legislation that would extend the pre-election processing period to the Saturday before the election. And she said the Secretary of State's office is considering submitting a bill that would push it back even further, to Friday.

Such smaller scale proposals may be acceptable, she said, to lawmakers who were skeptical about early voting.

Another measure that would streamline voting tabulation involves write-in candidates for municipal elections. Determining the intent of write-ins can be a time-consuming task that slows down completion of the counts. Stevens said the association's draft bill

would require counting of municipal write-ins only when they are numerous enough to affect the outcome of the race.

Write-ins would still be counted as they are now for state elections.

Such smaller measures may not satisfy advocates of early voting, including town clerks who take that position, but they may make Election Day a more manageable proposition,

Reynolds said.

And the goal of encouraging participation in election is one the clerks all seem to share.

Even though it creates headache for him and his staff, Merton Brown still believes alternative forms of voting should be offered. Of absentee balloting, he said, "I promote it to the hilt. It's still all about allowing the people's voice to be heard." ■

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PEOPLE

Interim York Town Manager **Steve Burns** has done such a good job selectmen have started negotiations to offer him the job permanently. Burns was named acting manager in August, replacing Rob Yandow.



Kristen Cloutier

Lewiston City Councilor **Kristen Cloutier** won the prestigious 2014 Community Leader Award by Healthy Androscoggin. Cloutier works as assistant director at the Bates College Harward Center for Community Partnerships. The award is presented annually to a person who shows outstanding leadership – both in their work and in the community – as well as altruistic efforts to improve public health. Cloutier is serving her second year as a city councilor for Ward 5.



Ervin Deck

Ervin Deck resigned as manager of the Wiscasset airport, effective Jan. 31. Deck earned high praise for transforming the municipal airport so thoroughly that the facility now generates 10 times the amount of revenue as when he took over in 2008. Deck, who served for 36 years in the U.S. Navy, retiring as a lieutenant commander, will begin working full-time for Stantec, a firm that consults on infrastructure projects. Deck was working part-time for Stantec in 2008 when he accepted the airport job as a way to stay busy, he said. An aviation expert, he recently was promoted at Stantec and will supervise a staff of six in the general aviation planning division.

Cape Elizabeth town residents and municipal leaders mourned the death of former Public Works Director **Herbert Dennison**, 69, who was killed in a freak accident at the town transfer station in December. A driver backed into Den-nison, who was dumping his trash into a compactor. The force drove Dennison through a chain safety fence and into the compactor below, which was not operating at the time, officials said. The town

took fast action to fortify the transfer station to prevent future tragedies, an effort that continues. The street where the transfer station is sited is named Den-nison Drive.

Retired Old Orchard Beach Deputy Fire Chief **Edward Davis** died Dec. 1. He had served the city for 29 years as firefighter, lieutenant, captain and deputy chief. A fire department service was part of Davis' funeral.

Alna Town Clerk **Judy Greenleaf** retired on Dec. 31 after serving two stints at Town Hall, including clerk for the past five years. Greenleaf said she plans to continue writing her weekly newspaper column about Alna people and events. Greenleaf, recently widowed, credited her late husband for leaving her in a financial position to stop working and start spending more time with her eight grandchildren and three great-grandchildren.

Houlton councilors last month confirmed the appointment of **Terry "Joe" McKenna** as the town's new police chief. McKenna, 57, has 38 years of experience in law enforcement in Florida. He must graduate from the Maine police academy to be a certified police officer in Maine. He was to begin his new job on Jan. 5. McKenna was selected from a pool of 12 candidates by a search committee that included town officials and police from several local and state law enforcement departments.



Anthony Martin

Anthony Martin is now the certified assessor in the Town of Van Buren. Martin was hired as the town assessor in August and passed the state assessors' exams on Nov. 12. Martin moved to assessing after working as Van Buren deputy tax collector and

deputy town clerk. He also is the former executive director of the Greater Van Buren Chamber of Commerce.

Matthew Noel resigned from the Windham Town Council in mid-November after serving five years. He did not give a reason when he resigned. The council is unlikely to appoint a replacement, opting instead, as in the past, to keep the seat empty until voters make the replacement. Noel's term was to expire in 2015.

Carolyn Paradise retired as Casco public librarian in December to move to Rhode Island to help her daughter with a new baby, Paradise' first grandchild. Paradise, who worked for Casco for 18 years, said the decision was "made out of love, not logic." Paradise said she did not plan to leave her career this early; she loves being surrounded by books and "intertwining" patrons' lives into her own experience and growth. "A lot of these people have been through moving experiences — losing children, going through health issues. I have gotten to know them really well. When you intertwine your life with theirs, it becomes something very special," she recently told the Bridgton News.

Arundel Town Manager **Todd Shea** has taken the top position at Kennebunk Light & Power District, effective Feb. 2. The district serves Kennebunk and parts of abutting communities. Shea worked as Hallowell city manager from 2008 to 2011, when he accepted the Arundel job. He was selected from a pool of 40 candidates for the district position.

Berwick Town Manager **Patrick Venne** resigned to take a job with the real estate development firm Federated. Hired in October 2012 as director of planning and land use, Venne was soon promoted to manager. Venne said recently that the timing is right for his family to make the change, and that he is leaving the town in a strong position for his replacement. ■

If your municipality submits a news item for the Townsman, consider sending a corresponding photo to:

Eric Conrad (econrad@memun.org)

or

Jaime Clark (jclark@memun.org)

BANGOR

The earth opened up on Hammond Street just after Christmas when an 1800s brick sewer pipe finally gave way, causing a 30-foot long sinkhole. No one drove into the nine-foot deep gap and crews began repairs immediately.

BRUNSWICK

The former Brunswick Naval Air Station continues to grow. The Midcoast Regional Redevelopment Authority announced in late December that 10 tech companies are signed up as potential first tenants in a "business accelerator" project called TechPlace. Fashioned after a business incubator program, the authority would provide 20,000 square feet of office space adjacent to a runway at Brunswick Landing for high-tech work such as renewable energy and information technology. The authority is a "municipal corporation" under state law, working collaborating throughout the Bath-Brunswick region to redevelop the air base for civilian use. The authority's latest project is proposed in three phases for total new building space of 92,000 square feet. The first phase still must be approved by local government officials.

BOWDOINHAM

Refusing to lose its only country convenience store, the community responded to a Facebook post saying the store would have to close for financial reasons. Residents began raising money for a new freezer for the store, and handing the owner checks and cash. The help made the store owner uncomfortable but people insisted, according to published reports. The next-closest store is located 13 miles away in Topsham, so the community is rallying to keep its store open.

KATAHDIN AREA

After gaining a coveted endorsement in December by one of Maine's two largest Native American tribes, the effort to create a North Woods national park seems to have picked up momentum, according to some. David Farmer, a spokesman for the project and a former spokesman for Gov. John Baldacci, announced that a community outreach part-time position would be created by the Roxanne Quimby foundation advocating for the park. Quimby is willing to donate 100,000 acres near Baxter State Park for a 150,000-acre national

NEW ON THE WEB | www.memun.org

Highlights of what's been added at www.memun.org since the last edition of the *Maine Townsman*.

Fiscal Survey. MMA's State & Federal Relations staff released its annual report on municipal fiscal matters – primarily, revenues and spending. This year's report was marked by a low response rate, signaling that municipal staffs are struggling to do "extra work" like providing this data.

Real Estate Conference. The Maine Real Estate and Development Association will host its annual forecast conference on Jan. 22 at Holiday Inn by the Bay in Portland. This is the biggest gathering of commercial real estate professionals and developers held in Maine. The keynote speaker will be Michael Dolega, senior economist at TD Economics. Gov. Paul LePage will deliver opening remarks.

Revenue Sharing: By the Numbers. MMA's State & Federal Relations staff created several sets of numbers showing how the state Legislature and past two Administrations are using funds dedicated by law to the Municipal Revenue Sharing Program to pay for other state spending priorities.

park and recreation area. Many municipal officials, both elected and appointed, support the proposal, while some oppose the grand plan. The public is divided.

LINCOLN

Hoping to save money by collaborating, and keep property taxes stable or at least manageable, nine rural Penobscot County towns are exploring ways to make bulk purchases and share more services. Officials from Burlington, East Millinocket, Enfield, Lee, Medway and Passadumkeag and Lee Academy and RSU 67 have been meeting for months with Lincoln and Howland town leaders. Everyone agrees they must find even more ways to help each other shoulder costs, even though many towns have cut budgets to the bone. As long as the state continues to take money from municipalities, officials in the remote area want to try to mitigate the hardship for residents already struggling to pay their property taxes, the most regressive form of taxation in Maine. Unless the towns can find even more economy-of-scale projects, officials will have to continue cutting core services.

SOUTH PORTLAND

Freshman City Councilor Brad Fox has asked the council to consider supporting a local raise in the minimum wage. Fox said the city should follow its larger neighbor, Portland, because the two cities' economies are so intertwined. Portland Mayor Michael Brennan proposed a year ago this month that the city raise the

minimum wage from \$7.50 an hour, the statewide rate, to \$9.50 an hour on July 1, 2015. The finance subcommittee is studying the proposal in Portland and recently said it needed more time before making a recommendation to the full council. Fox also advocated for a living wage, officially defined in Maine at about \$12 an hour, arguing the increased wages would lift some people out of poverty while rippling through the regional economy.

VAN BUREN

The town council on Dec. 15 voted to eliminate the position of economic development director, saving the town \$50,000 a year. Town Manager Dan McClung was hired in June in part because of his extensive experience with economic development work. He and others will distribute the work of the director as the council and manager develop a strategy for the future of downtown and other economic development projects. ■

CORRECTIONS

An article about GIS mapping in the November 2014 *Maine Townsman* should have said Steve Weed is an assessor for the City of Brewer.

An article in the December 2014 edition about municipal broadband projects should have said, in every reference, that the Town of Rockport has been a pioneer in the field.

MUNICIPAL BULLETIN BOARD

JAN. 22

MBOIA Membership Meeting: South Portland

The Maine Building Officials & Inspectors Association will hold its annual Membership Meeting on Jan. 22 at the Best Western Merry Manor Inn in South Portland.

A social hour begins at 9 a.m. and the event will conclude at 3 p.m. Cost is \$20 for members who meet the pre-registration deadline and \$30 for members at the door; or, \$30 for non-members who pre-register or \$50 at the door. Camaraderie and networking are important aspects of this event.

JAN. 28

Elected Officials Workshop: Augusta and Caribou (via video)

Attorneys and staff from MMA's Legal Services and Communication & Educational Services departments will lead a workshop for Elected Officials on Jan. 28 at the Maine Municipal Association Conference Center in Augusta. The workshop will be offered via video conference at the Northern Maine Development Commission office in Caribou. The evening workshop begins with registration at 4 p.m. and ends at 8:30 p.m., including a light dinner.

The workshop is designed for newly elected officials, but veteran councilors and select board members may benefit from the refresher and legal updates as well. Topics include: open meeting and records; roles and responsibilities; effective communication; and, conflicts of interest, among others. Cost for the workshop is \$55 for MMA members in Augusta and \$45 in Caribou.

JAN. 29

Customer Service Excellence: Kittery

Margaret Noel, Manager of Educational Services at MMA, will lead a workshop on Customer Service at the Kittery Community Center on Jan. 29. The interactive workshop walks participants through the

customer-service cycle and targets key strategies for implementing and maintaining an excellent customer-service plan.

Registration will begin at 8:30 a.m. and the workshop will end at 4 p.m. Cost is \$75 for MMA members and \$150 for non-members, including workshop materials and a light lunch.

FEB. 10

Planning Boards/BOA: Augusta

MMA's Legal Services Department will host a session for local Planning Board and land use Boards of Appeal members from 4 p.m. to 8:30 p.m. on Feb. 10 at the MMA Conference Center in Augusta.

The workshop is designed as an introduction for new or less experienced members, but veterans may find an update useful as well. Among the topics to be covered: jurisdictional issues; conflicts of interest and bias; public notice requirements; site visits; procedure for decisions; and, variances. The cost is \$55 for MMA

members and \$110 for non-members.

FEB. 24

Verbal Judo! Augusta

One of MMA's newest and most requested sessions – Verbal Judo: Tactical Communications for the Contact Professional – will be offered on Feb 24 at the MMA Conference Center in Augusta. If you work with the public and you ever find yourself in conflict situations, this workshop is for you.

The featured speaker is Michael T. Manley, Vice President of Operations and Trainer for the Verbal Judo Institute. Mr. Manley has over two decades of experience as a police officer and supervisor in New York City. His clients have included: Radio City Music Hall, Bell South Telephone, Hard Rock Café and many others.

The workshop, which includes five distinct "modules" addressing conflict resolution, begins with registration at 8 a.m. and concludes at 4:30 p.m. A reserved seat, workshop materials and light lunch will be provided. ■



BuildMaine in Lewiston, an urban planning event co-sponsored by Maine Municipal Association. (Photo by Carol Liscovitz Photography, LLC)

All of the upcoming workshops can be found on the MMA website.

Use the following link:

<http://www.memunorg/TrainingResources/WorkshopsTraining.aspx>

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LEGAL NOTES

Eight Required Ordinances

Whether or not to adopt a particular ordinance is generally within the prerogative of each municipality under its “home rule” power. But in certain cases Maine (and in one case, federal) law mandates an ordinance. Here are the eight we know of:

General assistance. Every municipality is required to administer a general assistance or GA program consistent with State law and in accordance with an ordinance (see 22 M.R.S.A. § 4305(1)). The ordinance must be adopted by the municipal officers (selectmen or councilors), after notice and hearing, and must be amended annually by the same process to include updated GA maximum levels of assistance, etc. Also, the ordinance, including maximums and all forms and notices, must be filed with the Maine Department of Health and Human Services.

Shoreland zoning. Any municipality with a great pond, river, stream, saltwater body, or coastal or freshwater wetland within its boundaries (which surely must be every municipality in Maine) must have a shoreland zoning ordinance (see 38 M.R.S.A. § 438-A). The ordinance must be adopted by the municipal legislative body (town meeting or town or city council) and must be consistent with or no less stringent than the minimum guidelines adopted by the Maine Board of Environmental Protection (BEP). If a municipality either fails to adopt an ordinance or adopts an ordinance that does not satisfy these requirements, the BEP may adopt one on its behalf, and the municipality must then administer and enforce it.

Cable television. Any municipality with cable television service (which again must be almost all municipalities in Maine) must have a cable television franchise ordinance (see 30-A M.R.S.A. § 3008(4)). The ordinance must be adopted by the municipal officers before granting any cable system operator a “franchise” or the right to locate its facilities within the public ways. The ordinance may regulate the process for granting franchises and may specify the contents of franchise agreements but generally may not regulate cable service rates or programming, both of which are governed almost entirely by federal law.

Street addressing. Any municipality that participates in the E-9-1-1 emergency ser-

MUNICIPAL CALENDAR

ON OR BEFORE JANUARY 31 — Written statements, as prescribed by State Tax Assessor, of wages withheld in the previous calendar year is to be furnished each employee (36 MRSA § 5251).

■ Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, DHS #11, Augusta, ME 04333-0011 [22 MRSA §4311].

FEBRUARY 16 — Presidents’ Day, the third Monday in February, is a legal holiday (4 MRSA § 1051); and shall be observed as a school holiday in the absence of any vote of the superintending school committee designating how the day shall be observed (20-A MRSA § 4802).

BEFORE TOWN MEETING — Selectmen must have a warrant posted at least 7 days before town meeting and have a constable or named resident make return (30-A MRSA §2523). If adoption of an ordinance is proposed, make sure of compliance with 30-A MRSA §3002. Send copy of town report to the following: MAINE MUNICIPAL ASSOCIATION, State Tax Assessor, State Auditor and State Librarian.

■ Town Meeting voter registration and voting list requirements. The registrar shall accept the registration and enrollment of voters prior to the municipal election according to the time schedule prescribed by 21-A MRSA § 122 unless changed by municipal officers.

■ Copies of annual report are to be deposited in the municipal office or a convenient place of business for distribution to voters at least 3 days prior to the annual meeting (30-A MRSA § 2801)

■ Check 30-A MRSA § 5823 for audits, and § 2801 for town reports.

BY MARCH 1 — Solid Waste Municipal Reporting forms are due back to the State Planning Office, 38 State House Station, Augusta Me 04333 [38 MRSA §2125(1)].

vices dispatch system must provide the Maine Emergency Services Communication Bureau with an accurate and continually updated list of street or road names (both public and private), addresses, etc. (see 65-625 CMR Ch. 1, § 6). The only legal and practical method of ensuring that this data is accurate is to adopt a street addressing ordinance with a standard procedure for assigning street addresses. The ordinance must be adopted by the municipal legislative body. The Bureau offers model ordinances and technical assistance upon request.

Floodplain management. Any municipality whose property owners wish to participate in the National Flood Insurance Program (NFIP) must have a floodplain management ordinance (see 44 CFR Part 60.3). The ordinance must be adopted by the municipal legislative body and must meet the minimum requirements for mitigating flood hazards based on maps furnished by the NFIP. Ordinances and permit forms are available from the Maine Floodplain Management Program,

the NFIP’s state coordinating agency.

Energy savings. Any municipality whose property owners wish to participate in the State PACE (property assessed clean energy) loan program must have a PACE ordinance (see 35-A M.R.S.A. § 10154(1)). The ordinance must be adopted by the municipal legislative body. Model ordinances, loan agreements and forms, as well as educational materials, are available from the Efficiency Maine Trust, a State agency.

Special amusements. Any municipality with establishments licensed to sell liquor for consumption on the premises (bars, taverns, etc.) must have a special amusement ordinance in order to permit licensees to have live music, dancing or entertainment (see 28-A M.R.S.A. § 1054(11)). The ordinance must be enacted by the municipal legislative body and must specify the permitting procedures; it may also regulate hours, noise levels, etc., and whether nudity is permitted.

Holding tanks. Any municipality wishing to permit permanent holding tanks

LEGAL NOTES

for first-time wastewater disposal systems must have a holding tank ordinance (see 10-144 CMR Ch. 241, § 7(D)(3)). The ordinance must be adopted by the municipal legislative body and must be at least as strict as the model ordinance in the State's Subsurface Wastewater Disposal Rules.

For the record, we note that certain ordinances, including general assistance ordinances and shoreland zoning ordinances, must be filed with certain State agencies. For details, see "Some Ordinances Must Be Filed with The State," *Maine Townsman*, "Legal Notes," February 2014. (By R.P.F.)

Land Use Permits & Delinquent Taxes

Question: Can we lawfully deny a land use permit if there are delinquent taxes on the property?

Answer: No, certainly not without an ordinance clearly authorizing it. But we're not confident that even an ordinance could legally do so, for several reasons. For one, there is no apparent rational relationship (as there must be for an ordinance to be legal) between the collection of property taxes and the legitimate objectives of land use regulation, such as promotion of orderly growth and development, protection of neighborhoods and property values, and preservation of the environment.

For another, there are already adequate legal methods for enforcing the collection of delinquent taxes, especially real estate taxes (recall the automatically foreclosing statutory lien, see 36 M.R.S.A. §§ 942-943).

Besides, in some cases there may be a perfectly legitimate reason why taxes remain unpaid – for instance, a bona fide dispute over ownership of the property or its assessed value.

While we know of no Maine case law on point, we're doubtful that the issuance of land use permits can be conditioned on payment of property taxes even if an ordinance purported to authorize it.

We've heard of some municipalities making *business* licenses or permits contingent on payment of property taxes, and we've been told that in a few cases this has been authorized by the Maine Legislature by private and special law, but there may be a more defensible connection between property taxes and the right to engage in commerce than there is with land use permits. (By R.P.F.)

Municipal Debt Limits

Last month we wrote about borrowing in anticipation of property tax payments (see "Tax Anticipation Notes," *Maine Townsman*, "Legal Notes," December, 2014. Since then several readers have asked if there are limits on how much debt a municipality in Maine can carry. The answer is yes, there certainly are.

According to 30-A M.R.S.A. § 5702, a municipality cannot incur total debt, not counting debt for schools, storm or sanitary sewers, energy facilities, and municipal airports, in excess of 7.5% of its last full State valuation of all taxable property.

There are also limits on most of these exclusions: School debt cannot exceed 10%; storm or sanitary sewer debt cannot exceed 7.5%; and municipal airport debt cannot exceed 3%. (The benchmark, again, is the municipality's last full State valuation.)

But when all debt, including the exclusions, is combined, total debt cannot exceed 15% of the State valuation.

Note that a municipality can set lower (but not higher) percentages or amounts than those established by statute.

Also noteworthy is that the statutory debt limits do not apply to borrowing in anticipation of taxes, revenue-sharing or state or federal aid, among other things (see 30-A M.R.S.A. § 5703). (By R.P.F.)

Public Employee Phone Records Not All Public

According to a recent Maine Supreme Court decision, not all records associated with a government-issued telephone qualify as public records under Maine's Freedom of Access Act (FOAA or "Right to Know" law).

In *Doyle v. Town of Falmouth*, 2014 ME 151, a local government "watchdog" demanded all bills for the school-issued cell phone of the town's school superintendent. The town provided redacted (edited) copies, but he insisted on full disclosure, so he sued (and lost) in lower court.

On appeal, the Law Court first noted that where a public record contains information not subject to disclosure under FOAA, it is both permissible and appropriate to redact it. The Court then held that three specific categories of information contained in the requested phone records were exempt from disclosure: (1) personal phone numbers of public em-

ployees, including those for work-issued cell phones, (2) phone numbers and other information relating to personal calls that are unrelated to public or governmental business, and (3) phone numbers of school students and their parents, which are generally confidential under federal law.

Incidentally, Doyle, the plaintiff in this case, was dubbed by the *Bangor Daily News* as "one of Maine's most prolific FOAA users," having filed hundreds of records requests in the last several years, sometimes on nearly a daily basis. Unfortunately, under current law there is no effective relief from serial requesters. (By R.P.F.) ■

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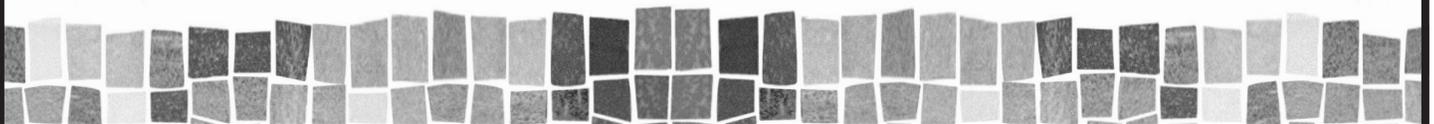
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