

Maine Townsmen

The Magazine
of the Maine Municipal Association

MARCH 2015

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Maine Townsman

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Great Big Sea



Ogunquit 15-year-old Ryan Shackford at first was intrigued by Harbormaster Fred Mayo's job because it was on the water. As Shackford learned more about local government, his career path became clear.

Buttonholing your local legislators, soon, is the most effective way to explain how the state's proposed FY 2016-17 budget would change your community.
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Issuing municipal bonds may be the easy part. Attorney E. William Stockmeyer emphasizes the importance of post-issuance monitoring and reporting.
[Page 19](#)

Cover photo: Freelance Photographer Jill Brady of Eliot took this portrait photo in Ogunquit's town harbor.

Strategic Planning – Done Right

Most everyone sees value in strategic planning for municipalities. The question is: How to do it? Our experts weigh in on involving the public, timelines and other important details.
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Statehouse Success, in Pictures

Municipal officials handled themselves exceptionally well last month as Legislative committees took testimony on the proposed state budget.
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When a Big Taxpayer Waves Goodbye

It's a scene painted too often in Maine, in recent years: A major property taxpayer and employer pulls up stakes. Attorney N. Joel Moser outlines legal steps that affected communities can take.
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A MESSAGE FROM MMA

BY MICHELLE BEAL / MMA PRESIDENT

Please, communicate with your legislators soon

As you may have read in your Feb. 20 Legislative Bulletin, a great showing of municipal officials traveled to Augusta to testify to the Appropriation and Taxation Committees on important municipal issues such as revenue sharing, the homestead exemption and mandatory taxing of non-profit organizations. I, too, traveled to

understand the workings of our municipalities and, if they don't, that they will ask municipal leaders directly. Do not wait for the questions to come. Please do not sit and "wait it out."

There are already many municipalities and regional municipal groups that meet regularly with their representatives. For example, the City of Bangor has established a regular breakfast meeting and the League of Towns, which represents the four towns of Mt. Desert Island, the Cranberry Islands, Swans Island, Trenton, Lamoine and Ellsworth, is arranging a regional meeting with their representatives in the near future.

Finally, I encourage you to talk with your citizens and ask them to speak to their legislators. There is no better way to provide information than through direct communication. As quoted by Sydney J Harris, an American journalist, "The two words information and communication are often used interchangeably, but they signify quite different things. Information is given out; communication is getting through."

And on a bittersweet note, I am leaving the position as Manager of the City of Ellsworth and moving to a job



Perry Ellsworth, South Berwick's town manager, provides testimony on Municipal Revenue Sharing. (Photo by Ben Thomas)

Augusta to support Ellsworth City Councilor Gary Fortier as he presented his testimony. The two days of testimony from the municipal leaders was impressive to say the least. Presentations were impassioned yet factual and were not solely about the need to raise taxes to overcome the loss of revenue from the Governor's proposed budget. The information provided was varied and at times very specific to the speaker's municipality.

I urge you to continue the conversations that were begun at the State House. Call your local representatives and let them know the true impact that their budget decisions will have on your municipal budgets and the citizens in your community. We should not assume that they already

in the private sector, so I must say goodbye to the Maine Municipal Association and all of the wonderful managers, elected officials and staff that I have worked with over the last few years. I have thoroughly enjoyed my tenure as a member of the MMA Executive Committee. The Maine Municipal Association is a top notch organization run by a dedicated and hard working staff, Executive Committee and Legislative Policy Committee. I thank you all for the opportunity to participate and appreciate the trust you put in me to lead such an important organization. Although I am excited to begin the next chapter in my life, I am very sad to be leaving such an honorable profession and I will truly miss you all. ■

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In changing times, strategic plan's approach really matters

From Windham to Presque Isle, leaders believe in looking ahead. One expert says today's economic and political unpredictability suggest a shorter time frame is better.

By Douglas Rooks

The ongoing fiscal crisis for many municipalities can make it hard to plan for the future, but that only makes it more important to make the effort.

That's the view of David Nadeau, town council chair in Windham, who said he realized that annual budget debates weren't getting anywhere in terms of addressing policy. So, he became an advocate of strategic planning for the budget, a technique that the rest of the council has now endorsed.

"It seemed that we were in a crisis mode," he said, "and that we were going to be there forever unless we did something different."

One impulse councilors frequently have, Nadeau said, is to fault staff for perceived shortcomings in meeting the public's demands and expectations. "The last budget really got me thinking, though," he said. "The direction coming from the council was just about zero."

No matter how tight the budget seems to be, Nadeau said, there are still needs that must be addressed. "If we abandon our goals, we're not doing our jobs," he said.

For Nadeau, the beginning of strategic planning is simple enough: "Deciding where you want to be in five or 10 years." Recognizing that the future needs to be different means that the focus on the budget also needs to change.

Windham Town Manager Tony Plante, who's helping the council with the new process said, "If you ask townspeople what they want from the budget, they'll usually talk about keeping taxes down."

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

PARTS OF A PLAN

Some key considerations in a municipal strategic plan include:

Length: How far out can your community realistically project?

Public: What would your citizens want to see included or, possibly, cut?

Budget: What can your community afford? What are the revenue expectations?

Politics: How settled and united is your governing board?

'Have the conversation'

But that goal, by itself, doesn't tell the council much about what it needs to do, he said. "We're here for a purpose. Let's have the conversation about what we're trying to do."

And talking about what a town aims to do, amid continued austerity, also mean talking about what can't be done, Plante said.

He said the first order of business is establishing standards of service that can then guide the rest of the discussion.

For example: "Is it important, in the middle of a snow storm, to have a plow go by your house every four hours, or can it be every six to eight hours?" The answer, he said, will have a significant effect on how many trucks the town buys and how many drivers it needs to hire.

Plante acknowledges that the new approach to the budget is "a work in progress," and that it will take at least three or four years to get everyone on the same page – particularly the public.

Once citizens recognize that every item in the budget represents the cost of a public service, and that they ultimately decide how services will be offered, the annual debate will be much better informed, if not necessarily less contentious.

Nadeau warns that using a strategic planning approach won't necessarily make things easier. One change the council has made is to exclude municipal revenue sharing from its baseline budget. Because revenue sharing has become so unreliable, and unpredictable, Windham has decided to include it only at the end of the process, so that it doesn't create a shortfall.

"You'd like to count on it, but we've found that we can't," Nadeau said.

Ultimately, he said, strategic planning makes sense for a community like Windham that has undergone dramatic population growth over the past four decades. While North Windham and the Route 302 commercial strip has expanded shopping and dining opportunities, many older residents still treasure the town's rural character and expect the council to protect it.

A few years ago, the town rejected a plan that would have established a convention sewer system to serve this high-growth area. Now, Nadeau said, Windham needs to consider alternatives to accommodate growth. What it decides will have major implications for future budgets and town services, he said.

A broad design

Presque Isle City Manager Jim Bennett is a strong advocate of strategic planning, and he urges other communities to design it broadly, to include not only municipal affairs, but all aspects of community life.

Bennett, currently president of the International City/County Management Association, has served as city manager or administrator for Westbrook and Lewiston, as well as Presque Isle, over the past 15 years. He's overseen preparation of strategic plans for all three communities, and said that all three are different, because the situations and prospects for each municipality are unique.

A strategic plan, Bennett said, is different from a traditional comprehensive plan, which takes a "linear perspective" on land use, economic development and issues that affect the physical layout and growth of a community. Both planning techniques are necessary, but strategic planning – be-

cause it's relatively new to Maine – may require more active outreach, he said.

"It requires a wholesale look at both government and the community – where it is, and where it wants to go."

Although the three plans he's overseen were different, Bennett does see one common theme: Rivers as a stimulus for a different perspective on each community's possibilities.

In Westbrook, the closure of the Sappi pulp mill removed most of the unpleasant smell from downtown and spurred a decade-long effort to recast the community as an attractive part of the Greater Portland area.

In Lewiston, renewed focus on the once-polluted Androscoggin River expanded the possibilities for downtown

development. "Where once everything focused on the Lisbon Street shopping district, seeing Lewiston as almost as an island" – bordered by the old mills' canal system, and the spectacular downtown falls – changed perceptions, he said.

Successful redevelopment of old mill buildings, partnerships with neighboring Auburn and, last year, the opening of a new riverfront hotel all are the result of this new thinking, he said.

Presque Isle's downtown waterway, the Presque Isle Stream, which flows into the Aroostook River north of downtown, is less famous, but still a significant community asset, Bennett said.

The strategic plan, published in 2012, identified an urgent need for community reinvention.

"We're located in the oldest county in the oldest state in the nation," Bennett said. "Without some way to change that pattern, the future looks bleak."

Recreation center momentum

A community recreation center, long discussed, gathered new momentum in part because of the strategic



City of Presque Isle

2012 - 2017 Strategic Plan








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plan recommendations. This spring, bids will be opened for the project, estimated to cost \$7.5 million – not something many communities in Presque Isle’s situation would attempt, Bennett said.

But the location of the rec center is also significant. “We have a linear downtown, spread out along Route 1,” Bennett said. “It’s hard to develop any kind of pedestrian feel.”

So the site is a block away from Main Street which, in turn, opens access to the river, which can now become a focus for development.

Doing something new often requires giving up something else, but even there strategic planning helped ease the transition, according to Bennett.

The city council voted to close the municipal indoor swimming pool, which had become expensive to maintain even though it was still in good shape. The move, which saved \$100,000 annually – “30 cents on the tax rate,” Bennett observed – was made easier after the city reached an agreement for municipal use of the University of Maine at Presque Isle pool.

“In the past, we wouldn’t necessar-

ily have reached out for that kind of partnership,” Bennett said. “It takes a new way of looking at things to do that.”

One of the hesitations for those considering strategic planning is the sheer pace of change, said Jim Damicis, vice president of Camoin Associates, a former research director for Maine Municipal Association and frequent presenter at MMA events.

“We have to recognize, even when it comes to strategic planning, that the future is very much unknown,” he said.

But that doesn’t mean throwing planning out the window, he said. “We still need to plan for the budget

process, to collect data and make projections about community needs in the future,” Damicis said. “Focusing on an overall vision and goals is still important.”

Divisiveness: Sign of times

But so is a recognition that a community may not be able to anticipate the events and trends that will affect its future. One sign of uncertainty about the future is “how divisive we’re become,” Damicis said.

In his hometown of Scarborough, for instance, “almost every major decision has come down to almost a 50-50 vote.”



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The shift from a manufacturing and industrial economy to one based on services is now recognized as having profound impacts on municipal tax bases, Damicis said. But what's also becoming clear is that even attracting new businesses doesn't necessarily change that picture.

"The inability of the property tax to capture the value created by the New Economy is becoming a major problem."

Without changes, he said, that could mean bankruptcy for some municipalities, or forced consolidation with neighbors.

To avoid that future, Damicis said municipalities need to take a hard look at everything they do, from schools to roads, "to make sure this is really something we should be doing."

While the need for such new thinking might seem overwhelming, Damicis said that some communities are starting a second track from conventional strategic planning, which he calls "adaptive planning."

The key ingredients, he said, are not data and projections, but "opening up the conversation" so that everyone feels involved.

"At every meeting, you're going to find someone asking about the return on investment, or ROI. And a lot of the time, you're not going to have the answer," he said.

Shorter time horizons

Instead, he said, it's better to confine projections to a one- to three-year period that allows reasonable confidence. Then, focus on getting diverse groups from the community together – not only the people usually involved.

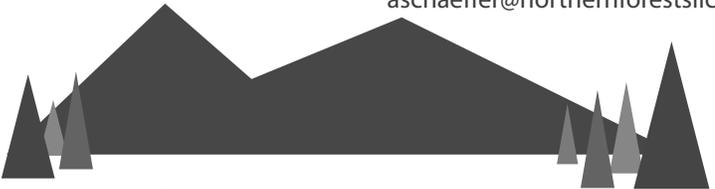
The results of such conservation are as likely to result in the scrapping of certain programs or ideas as the implementation of them. Business entrepreneurs are used to this, but most towns and cities aren't, Damicis said.

Listening to new points of view and taking input from those not now involved in municipal government will often reshape everyone's expectations.

Working with institutions like public and private colleges and universities, for instance, is far more likely to allow a town or city to get a handle on its workforce needs that any economic development model it's likely to adopt.

Developing new leadership and a "coalition of the willing," from diverse backgrounds are often more important than writing a plan, he said. It's not that the need for planning has disappeared, just that that it has to take place across a broader landscape, with the understanding that the pace of change may only increase. ■

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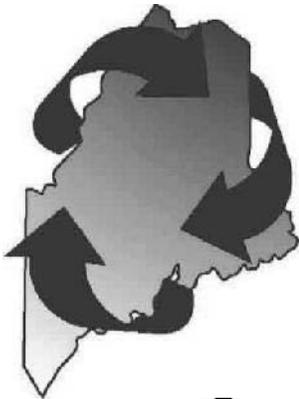
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Ogunquit exchange program recruiting future local leaders

The sea called initially, a high school sophomore says. From there, the more he learned about the harbor master's job and municipal government, the easier his career choice became.

By Liz Chapman Mockler

It's not often that a germ of an idea grows into something that changes your life, but that's what happened to Ryan Shackford after hearing an announcement about a municipal exchange program over the school intercom last year.

"It was an eye opener" Shackford, 15, said of his municipal work with the Perkins Cove harbor master in his hometown of Ogunquit.

"I think people have some sort of understanding (of local government), but personally I didn't have any knowledge until I jumped in and started learning first-hand."

And jump in Shackford surely did. Perhaps you could even say he dived in.

After hearing the announcement while waiting for the school bell and getting involved, Shackford met with Harbor Master Fred Mayo, while other students preferred to tour the police department and dispatch center.

Shackford did not want to be a harbor master; he had never thought of it. But he was drawn to the ocean and the skiffs and yachts. He loved the cove and the seemingly constant activity. He loved the tides and the smell of the ocean.

In meeting with Mayo, Shackford only wanted to quench his curiosity about how a person runs a sea harbor, he said.

But Shackford and Mayo bonded like a good fish sandwich and talk soon turned into a summer job for



Ryan Shackford and Fred Mayo go out for a spin. (Photo by Jill Brady)

the student. Now, Shackford said, he intends to make harbor mastering a career. Mayo, meanwhile, said he plans to keep his job only until Shackford hears his final school bell and is ready to take over.

"He's one of a kind," Mayo said of his assistant. "He's an intelligent, ambitious Maine kid. He's really taken hold of this. He has taken the initiative to take this on."

A good eye

Mayo agreed that the job was an "eye-opener" for Shackford, but said his young assistant is a hard-worker up to any challenge and has a Midas touch with the public.

Mayo said Shackford had a natural ability to treat everyone equally, from President George H.W. Bush when he brought famous friends to restaurants in the cove, to the lobsterman who needed a battery boost.

Mayo laughed when remembering the morning he told Shackford they would be painting a bridge in the cove that day.

Shackford looked askew, with one eye closed, and asked Mayo: "The whole bridge?"

Mayo said he thought that might have been a pivotal day when Shackford fully understood that no matter the job, if it was in the harbor it was their responsibility.

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

He relished it.

Shackford said his favorite parts of the job are the spontaneous nature of the work, and his chance to meet people from all over the world, and make sure they feel welcome in Maine and Ogunquit.

For Mayo? “This is the best job I’ve ever had.”

Mayo said Shackford will have years of experience by the time he graduates from Wells High School, and the support of the Maine Harbor Master’s Association, which will provide learning, leadership and training opportunities once he takes over – if not before.

Planting the seed

Town Recording Secretary Maryann Stacy leads a summer history research seminar on the Isle of Shoals every year. Last summer, for the first time, a few students attended the conference, Stacy said.

She was impressed that teenagers would be interested enough to travel six miles out to sea for a seminar. A member of the Isle of Shoals Association, Stacy said she returned to her municipal work with students on her



Students learn about police operations. (Submitted photo)

mind.

“Things just kind of grew from there,” Stacy said recently. “We wanted them to see there were opportunities here. So that drove us a bit.”

Stacy said Town Manager Tom Fortier loved the idea and immediately wanted to offer students more access and exposure to municipal government. He said recently selectmen are

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Meeting with Ogunquit officials. (Submitted photo)

supportive and hopeful the program will be long-lasting.

Officials also hope the program will attract other students, like Shackford, who want to become police officers, firefighters, managers, town clerks and public works employees.

“I was a social worker” before switching to municipal government, Fortier said. “The entire concept of positive interaction with the community and sustaining communities is always intriguing.”

Fortier has been Ogunquit town manager for six years and previously served as island administrator for 18 for the City of Portland. He said Shackford’s and Mayo’s partnership is exactly what he and Stacy were hoping for when he agreed that the idea was

worth pursuing.

“It is our hope that this program will be a way of keeping residents who have grown up locally to build a future here,” said Fortier, who also briefly managed the Town of Richmond in his career.

“It is our goal to provide students with an opportunity, a path some students may never have considered otherwise,” he said.

“The select board is always touting collaboration and consolidation,” Fortier added. “This project, in essence, reached over to the school side seeking a partnership, and it’s done just that.”

Learning the ropes

For Shackford, he was surprised

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by how quickly he fell in love with the harbor work and how sure he is that he wants to grow into the job.

Shackford, a sophomore, will work with Mayo next month to begin getting ready for another busy summer. He will work full-time for a second summer this year.

He works essentially as assistant harbor master already. Mayo, a lobsterman for 30 years before taking the harbor master's job five years ago, said he is amazed at how successful the pair has been and how supportive town leaders are of their efforts.

And there are many efforts. Shackford said he is most delighted at the varied pace and assignments of the work – the never-knowing-what-will-happen feeling he has every morning.

"I like the public servant aspect of the job," Shackford added, while admitting that initially he did not like that he and Mayo could not keep the money they generated in the harbor.

After all, they had earned the money, Shackford said.

"I had to understand why the mon-

ey we earned by hard work was not our money," Shackford said. "I eventually learned the money was the town's and everyone's money."

The teenager said he also was intrigued by the municipal chain-of-command and realized its import from Mayo and others.

"It was interesting because the whole chain of command needs to work perfect because every decision affects almost everyone involved inside the town," he said.

Fortier said his staff takes time to mentor students despite their busy daily schedules. They give tours, answer questions and open their doors. He said municipal employees are gratified that young people are interested in local government. They share Fortier's and the selectmen's enthusiasm for the program, and hope it continues long-term.

'Rewarding and uplifting'

"It is rewarding and uplifting to staff when they see a successful outcome such as Ryan's. It's all very ener-

gizing," Fortier said.

Isabelle Kirwin of Eliot, who participated in the program when a second school was included, agreed with Shackford that the experience is illuminating and valuable.

Kirwin, a senior, said she was interested in the program because of her public policy class. She decided the best way to find out how local government worked was to go and see.

"It is valuable having the experience to meet the people who work in law enforcement or at the town office," she said. "It gives you a new perspective on how things work and how really important their work is to everyday life."

Kirwin, who is waiting to hear from colleges, said the program started with a germ of an idea from recording secretary Stacy. From there, it was given life by the town manager and select board. Ultimately, it gave her an opportunity that other students should try.

"I would definitely recommend it," she said. ■

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STATEHOUSE HEARINGS

POWERFUL TESTIMONY



Brewer City Councilor Beverly Uhlenhake.



Municipal officials wait to testify.



Sanford City Manager Steve Buck.



Portland Councilor Nick Mavodones, Jr.



Calais Mayor Marianne Moore.

It wasn't just the quantity – it was the quality. Four dozen municipal leaders from across Maine testified before the Legislative Taxation and Appropriations committees in mid-February regarding the proposed FY 2016-17 state budget offered by Gov. Paul LePage.

Drawing sharp criticism was the governor's proposal to end Municipal Revenue Sharing – a 43-year-old program, established by law, that is funded at a 40 percent (\$60 million vs. \$160 million in FY 2016) level. The Governor aims to eliminate it in FY 2017.

The testimony was excellent, showing in detail how municipalities have tightened their budgets in recent years and what effects removing the remaining \$60 million in revenue-sharing funds would have. (Namely, local property taxes going up while city and state services go down.)

Two other things: Municipal officials provided example after example of collaborative efforts occurring among towns and cities statewide. And, they demonstrated the excellent, cost-effective work that municipalities do all the time at the behest of state government.

To read more about the hearings, visit MMA's website (www.memun.org), click on "Legislative & Advocacy," then "Legislative Bulletin" and look for the Feb. 23 issue.

STATEHOUSE HEARINGS



Gardiner City Manager Scott Morelli and staff.



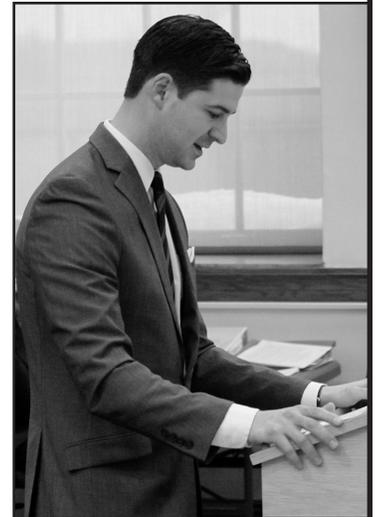
Lewiston City Manager Ed Barrett.



Waldo First Selectman Kathy Littlefield.



Houlton Town Manager Butch Asselin.



Waterville Mayor Nick Isgro.



Brownville Town Manager Matthew Pineo.



Union Town Manger Jay Feyler.

Municipal bonds need vigilant post-issuance monitoring

The author, a Portland attorney, recommends that municipalities designate officers and monitor facilities financed by bonds for their continued compliance.

By E. William Stockmeyer

After a municipality issues tax-exempt bonds, municipal finance officials must remain vigilant regarding post-issuance compliance with applicable tax and securities laws. This can be challenging. The laws are often complex and arcane, and the professionals who guided the financing to closing are no longer at your elbow. In addition, municipalities are responsible for post-issuance compliance as long as bonds remain outstanding, which can be for decades. As a result, compliance can lapse due to turnover of municipal employees and lack of institutional memory. This article will give a broad overview of how to monitor and comply with IRS and SEC regulations.

When municipalities issue tax-exempt bonds, the U.S. Treasury experiences a net loss of tax revenue from interest earned by bondholders. Consequently, the IRS is keenly interested in regulating conduct of municipalities that issue tax-exempt bonds, including their conduct after the bonds are issued.

Some municipalities sell their bonds through underwriters who resell the bonds on the public market. We will refer to these publicly traded bonds as “securities.” With the aim of preventing “fraudulent, deceptive,

or manipulative” practices in connection with the trading of securities, the Securities and Exchange Commission (SEC) directly regulates underwriters and indirectly regulates municipal issuers. For example, the SEC generally requires an underwriter to ensure that a municipal issuer of securities agrees to make ongoing public disclosures to update the market regarding the municipality’s financial and operating condition and other information that may affect the value of the securities. These disclosure obligations persist for the life of the securities.

Post-issuance noncompliance with IRS regulations can have significant negative consequences. A bond may lose its tax-exempt status retroactive to the issue date of the bond. Among other things, noncompliance may cause the IRS to assess financial penalties and expose the municipality to significant liability to bondholders. For securities, post-issuance noncompliance consequences include SEC enforcement actions, which may result in federal securities law liability and penalties, lower bond ratings, and higher costs of capital.

Identify compliance officer

In Maine, municipal bonds and securities generally can remain outstanding for up to 30 years. As a result, it is critical to create institutional knowledge about post-issuance compliance. To this end, the municipal governing body should adopt a compliance policy, or periodically review and update, as needed, its current policy. A compliance policy is generally broader than the written procedures that may accompany a specific bond issue. A policy will typically outline the general duties of post-issuance compliance

for bonds and securities, including the areas discussed in this article, and provide broad guidance for fulfilling these duties.

Perhaps most importantly, a policy will designate at least one employee or official who will be responsible for compliance (a “compliance officer”). It is advisable not only to identify the compliance officer(s), but to assign compliance responsibility to one or more specific positions and include compliance as part of those job descriptions. A municipality should also provide the compliance officer(s) with appropriate training and support as needed.

To understand a municipality’s specific post-issuance compliance obligations, the compliance officer should compile documentation, typically a closing binder or transcript, for each of the municipality’s outstanding bonds. If a transcript is missing, the lender or bond counsel may have copies.

A transcript should inform whether the bond was issued on a tax-exempt basis (subject to tax compliance) and/or whether the bond was a publicly marketed security (subject to SEC compliance). A transcript for a tax-exempt bond should contain a Tax Certificate and/or an Arbitrage and Use of Proceeds Certificate, in which the municipality typically (i) certifies as to expectations at the time the bond was issued and (ii) covenants to comply with tax regulations. A bond transcript may also include written procedures that outline the elements of post-issuance compliance for that bond. A transcript for securities should include a “continuing disclosure agreement” that details the municipality’s ongoing SEC compliance obligations.

E. William Stockmeyer is an attorney who heads the Public Finance subgroup at Drummond Woodsum in Portland and has represented clients on a wide range of financial and business matters, including bond issuance, budgetary matters, enabling and other legislation, school funding, school reorganization, construction contracts, public bidding and procurement, real estate, and board conflicts of interest. He attended Cornell Law School and also earned undergraduate and Master’s degrees at Cornell. He was admitted into the Maine Bar in 1986. Reach him via email at: bstockmeyer@dwmlaw.com.

Maintain records

Maintaining tax and securities compliance is difficult without adequate records. The closing transcript contains certifications and expectations as to the use of bond proceeds at the time the bond was issued. While a bond remains outstanding, the municipality should keep records, including those related to (i) the municipality's required reporting of the tax-exempt financing to the IRS (generally, Form 8038-G is filed at or shortly after issuance); (ii) expenditures of bond proceeds; (iii) investment earnings on bond proceeds; (iv) progress and completion of the bond-financed facility; (v) use of the facility, especially any nongovernmental uses; and (vi) sources of payment of debt service, including all income from private uses of the facility. All records should generally be kept for the life of the bond plus three years.

Two important concepts

Generally speaking, understanding two basic tax concepts will go a long way toward staying in compliance with the tax laws after issuing tax-exempt bonds. The two concepts are compliance with (1) arbitrage restrictions; and (2) private business use and payment restrictions.

Tax Concept 1: Monitor compliance with arbitrage restrictions on investment earnings

"Arbitrage" occurs when a municipality invests bond proceeds at

a materially higher rate of interest than that which the bond yields for bondholders. (The bond "yield" is reported on the IRS Form 8038-G.) The IRS generally restricts a municipality's ability to earn and keep arbitrage earnings. Compliance with these arbitrage restrictions has many components, but in our experience there are two matters that compliance officers must be especially vigilant to monitor, and where action may be required to stay in compliance.

First, the municipality is permitted to earn arbitrage on a project fund only for a "temporary period" after the bonds are issued (typically, three years). After the applicable temporary period ends, the municipality must "yield restrict," by limiting any earnings on unexpended bond proceeds so as to not exceed the bond yield, or making "yield reduction payments" to the IRS to reduce investment earnings down to the bond yield.

Second, although an issuer may earn arbitrage during the applicable temporary period, the issuer must still rebate to the IRS all earnings in excess of the bond yield unless the issuer qualifies for a "rebate exception." In most cases, a municipality intends to apply either the "small issuer exception to rebate" or a "spend-down exception to rebate."

The compliance officer must first identify the applicable rebate exception, which is usually stated in the

Arbitrage and Use of Proceeds Certificate. The most common rebate exceptions relied upon are the "small issuer exception to rebate" and the "two-year construction spend-down exception to rebate." The compliance officer must then become familiar with the requirements of the applicable rebate exception and monitor compliance with the rebate exception or else the municipality will be required to calculate and pay rebate to the IRS. If at any time it appears the municipality will not qualify for a rebate exception, contact bond counsel to discuss how to proceed.

To use the two-year rebate exception as an example, the bond proceeds (including investment proceeds) generally must be used for construction or renovation, and the municipality must meet four spending targets to satisfy the exception: 10 percent at six months, 45 percent at one year, 75 percent at 18 months and 100 percent at two years. The compliance officer must monitor the investment earnings and project expenditures and measure whether in fact the municipality actually meets the spending targets. If any target will not be met, the compliance officer should consult with its bond counsel to determine if another spend-down exception might apply, and if not, what further action to take for arbitrage rebate compliance.

Tax Concept 2: Monitor bond-financed facility to comply with limits on

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private business use and private payments

The second post-issuance tax compliance concept is that facilities financed with tax-exempt bonds generally must be monitored to ensure that they are applied to state or local governmental uses, except for small permissible threshold amounts of private business use and private security for or payments on the bond. Long after bonds are issued, but while they are still outstanding, there are numerous arrangements that may be deemed to be a private business use and that result in private payments that may be deemed to be indirect payments of a bond. For example, these might include a sale or rental of portions of the facility, certain management contract arrangements, or even advertising use such as for naming rights. In general, the thresholds for allowable private business use and private payment are 10 percent, but in some circumstances the thresholds are reduced to 5 percent.

The compliance officer must identify the use and payment thresholds in the Arbitrage and Use of Proceeds Certificate, be alert to recognize the situations that will arise, and monitor the extent of private business uses and payments for facilities to ensure they stay below the allowable thresholds. Bond counsel should be consulted in advance whenever facilities financed with tax-exempt bonds are proposed to be used for payment by private business.

Timely disclosures on "EMMA"

At the time a municipality issues securities in a public offering, the municipality typically will have provided an "official statement" and a "continuing disclosure agreement." The official statement is an initial disclosure document that informs investors about the offered securities and provides financial and operating information of the issuer. The continuing disclosure agreement is a binding contract signed by the issuer that specifies the type of ongoing disclosures that the issuer has agreed to provide to investors for the life of the securities and the timing of these disclosures. Since 2009, these disclosures are required to be uploaded to the "Electronic Municipal Market Access" (EMMA), a website of the Mu-

nicipal Securities Rulemaking Board (MSRB), where they are available to the public.

The continuing disclosure agreement is the key to identifying ongoing SEC disclosure obligations. The compliance officer should carefully review this document to become familiar with the types of disclosures that are required and the deadlines for making those disclosures. To help ensure timely continuing disclosure filings, the compliance officer can schedule periodic email reminders through EMMA.

In general, a continuing disclosure agreement will require two types of information: (1) annual financial information, including financial information and operating data of the issuer and audited financial statements; and (2) notices of the occurrence of "material events."

The annual financial information and operating data required to be disclosed is of the type that was provided in the official statement. The continuing disclosure agreement must specify the date by which this disclosure will be provided. Typically, this is 270 days after the close of a fiscal year. If the issuer does not timely disclose annual financial information and operating data, there is a further obligation to post a "Notice of Failure to File" on EMMA.

Material events are occurrences

that a reasonable investor would consider important in making investment decisions. The SEC regulations provide a nonexclusive list of 14 materials events, including payment delinquencies, ratings changes, bankruptcy, and merger or consolidation. Issuers are required to disclose a material event within 10 business days of its occurrence. This narrow 10-day window for disclosure emphasizes the need for the compliance officer to understand these disclosure obligations and to be alert to report the occurrence of such events.

Summary

Municipalities are often unaware of their federal tax and securities compliance obligations after they have issued tax-exempt bonds. Effective compliance requires adopting or updating an effective post-issuance compliance policy, identifying compliance officers, keeping thorough records, and providing proper training. The compliance officers must understand what needs to be monitored for tax and securities law compliance purposes. They must seek out timely advice when questions or potential problems are identified. Advice is available from written post-issuance compliance procedures, from bond counsel, and from other sources, such as websites maintained by the IRS and the MSRB. ■

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- 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).

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Elected Officials:

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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



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Reducing the impact when a large property taxpayer is at risk

Maine's 'Sudden and Severe Statute' addresses significant events, such as mill closures, but the law has not been widely tested in its current form.

By N. Joel Moser

It's no news that our state is in a massive economic transition. Marked by the early textile mill closures years ago in Lewiston and Biddeford, and continuing today in Millinocket, Bucksport and beyond, the dramatic decline in the papermaking industry has left thousands of people looking for new jobs in the shadows of the mills that once promised lifelong work. Local businesses that relied on thriving mills and mill families have been shuttered, and the municipalities that these great paper giants once called home now face collective losses of an estimated \$1 billion in assessed value. Millions of dollars of annual property tax revenues are gone.

Adding insult to injury, a municipality's loss is magnified by state subsidy formulas' inability to acknowledge the loss until years after it occurs, causing lower subsidies and higher taxes than the municipality otherwise would qualify for if the lost value were recognized immediately. The failure to quickly recognize the lost value in intergovernmental funding formulas is not widely understood, but its impact is significant.

There is a limited relief valve allowing a municipality to seek a more timely reflection of an acute loss in value within state subsidy formulas. Although deeply imperfect, Maine's "Sudden and Severe Statute" provides some municipalities a measure of

Joel Moser is co-chair of Bernstein Shur's Property Tax & Valuation Team and an Affiliated Member of the International Association of Assessing Officers. He expresses his appreciation to William Van Tuinen, Maine Revenue Services Property Tax Division, Shana Cook Mueller, Rob Crawford, Joan Fortin and Kate Theriault for their substantial contributions. Statutory citations have been removed for publication. You can contact Joel at jmoser@bernsteinshur.com.



The now-closed, iconic paper mill in Bucksport. (iStock photo)

reprieve by reducing their state valuations and triggering corresponding adjustments to their eligibility for state subsidies and county tax obligations. This article charts how that process works and what the statute can and cannot do to help a municipality in such dire circumstances.

April 1: The snapshot

To understand the challenges in leveraging this statute, we start at the beginning – April 1, the day on which Maine law requires assessors to take a snapshot of the value of all real and personal property to determine annual property taxation. When a mill shuts down, the reduction in the property's assessed value will be recognized within a year or less, as specified by Maine law, on the following April 1. At that time, the assessed value will be reduced and the municipality will need to respond to plummeting tax revenues, usually by dramatically cutting spending, shifting an enormous burden on to the remaining prop-

erty taxpayers, or some combination. Tough choices need to be made, and everyone in the community feels the loss.

Beyond the severe challenges the lost value creates for municipal budgets and taxpayers, the shock waves of a major closure reach all the way to Augusta. This wave is slower moving, and the delay leaves a municipality without access to state subsidies that could help ameliorate the local financial impact. The reason for the delay is the time it takes for the reconciliation between the municipality's revised local assessed value, and the recognition of that value in state formulas that determine subsidies and county tax obligations.

Getting to 100%: The state valuation process

A municipality's state valuation is a key component in intergovernmental funding formulas. The pie of available subsidy is 100 percent, and each municipality's share is determined by its

value relative to others; municipalities with lower state valuations, generally, receive a higher proportionate subsidy, and those with higher state valuations receive lower amounts of subsidy.

The state valuation calculation process is complicated and starts with local assessed values. Each year, the local assessor(s) will make changes in local assessments to reflect the just value of property as of April 1. Over time, a municipality must conduct a full review – called a revaluation – to realign assessed values closely to fair market value. While April 1 is the magic date for assessors, municipalities have flexibility when to conduct a valuation update; therefore, these happen at different times. The differences between the overall level of assessed value in a municipality and its current Fair Market Value (FMV), called the certified ratio, vary across the state and taken at face values, can distort how a municipality stacks up to others. Thus, the assessed value of one municipality cannot immediately be compared to that of another; it's not apples-to-apples unless all municipali-

ties have been assessed *and* revalued at the same time, which never happens in sync.

Equalization, the process of offsetting these variations, levels the playing field by creating an apples-to-apples comparison called the state valuation. Maine Revenue Services is charged with determining annual state valuations for the 489 incorporated municipalities and the Unorganized Territory. MRS' calculations understandably take time and rely on current and historical data.

Maine law requires MRS to "equal-

ize and adjust the assessment list of each town, by adding to or deducting from it such amount as will make it equal to its just value as of April 1." Therefore, determining a municipality's state valuation cannot begin until the local assessor has compiled the local list of assessments. MRS also formally must notice municipalities of the proposed state valuation and allow 45 days to appeal the results to the State Board of Property Tax Review. Given this timeline, MRS will finalize a municipality's state valuation between 10 and 20 months after a municipality

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determines its local lists. Because the 2015 State Valuation is based on the April 1, 2013 local lists, the current state valuation lags behind the local assessment by two years. State general purpose aid for education formulas also are historical, using an average of three most recent State Valuations *prior* to the most recently certified historical state valuations.

Accordingly, for years after the lost value of a closed mill is recognized locally, the municipality is treated in intergovernmental funding formulas as if that mill were still fully operational and paying millions of dollars in property taxes.

Sudden and Severe Statute

For municipalities in dire straits due to a sudden loss of a major taxpayer, there is a limited statutory option that enables a recalculation of the state valuation more quickly than the standard process allows. Pursuant to 36 M.R.S. § 208-A, a municipality that has experienced a “sudden and severe disruption in its municipal valuation may request an adjustment to its equalized valuation.” To do so, it must file a petition with MRS by “March 31st of the year *following* the tax year in which the sudden and severe disruption occurred.”

Qualifying under the statute requires significant hoop-jumping. The municipality must submit an appraisal report from a “qualified professional appraiser” and meet high eligibility criteria designed to ensure relief is granted for only the most critical, “legitimate” economic crises.

First, the net reduction in equalized municipal valuation must be at least two percent from the equalization municipal valuation. Second, the not-so-easily interpreted 2013 amendments require that the lost value must be from “the cessation of business operations, removal, functional or economic obsolescence not due to shortterm market volatility or destruction of or damage to property resulting from disaster attributable to a single taxpayer that occurred in or was not reasonably determinable until the prior tax year.” Third, the municipality’s equalized tax rate of residential property must exceed the state average. Finally, the statute does not recognize property acquired by the municipality, such as that acquired

through the tax foreclosure process.

MRS reviews the petition and determines if the municipality qualifies for an adjustment and, if it does, the state must recognize the lost value when calculating education funding obligations and distributions of revenue sharing for the *following* fiscal year and until the state valuation process recognizes the loss. A municipality may challenge a denial directly to Superior Court.

Not a cure-all

Unfortunately, the Sudden and Severe Statute offers far less relief than its name might suggest. “Sudden” and “severe” are narrowly defined con-

ditions, and the 2013 amendments make relief available only in limited circumstances. Although the two percent threshold for loss in equalized municipal valuation can be met with some closures, the municipality must incur substantial costs to obtain an appraisal and demonstrate the lost value was not due to short-term market volatility, such as a declining demand for a product. In practice, the statute therefore denies relief to responsible municipalities that have gradually lowered a large taxpayer’s assessed value to reflect changing economics – even though that sudden loss in value could be more than two percent of the equalized municipal valuation.

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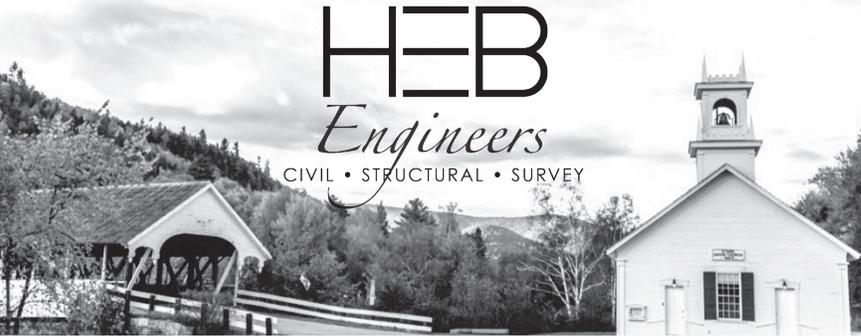
There are other concerns. The 2013 revisions prevent relief for lost value that was “reasonably determinable,” placing assessors in the awkward position of trying to anticipate changes in the market. Furthermore, even if a municipality does qualify, the law now limits relief to the *following* tax year rather than the current year. And perhaps most significant, the state general purpose education aid subsidy formulas now require a three-year average of state valuations, excluding the current year, when calculating “property fiscal capacity.” See 20-A M.R.S. § 15672(23). These formulas mean it will take even longer before the lost value is fully recognized, even with an adjustment.

The Sudden and Severe Statute still may offer assistance to municipalities facing the loss of a significant taxpayer, but the statute has not been widely tested in its current form. Nevertheless, it is clear state formulas and the statute could be plied to do more to reflect the painful realities many

municipalities know all too well. These municipalities made great financial contributions to our state and its tax base when the mills were booming, contributing generously to the overall pie and upping other municipalities’

eligibility for subsidy. During these times of economic transition, state subsidy formulas should do more to recognize these municipalities in their time of need, and to respond with all due haste. ■

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8:00 – 8:45 Registration & Continental Breakfast/Visit with Partners

8:45 – 9:00 Welcome

The Honorable Nelson Durgin, Council Chair, City of Bangor

9:00 – 9:45 Keynote Address

Dealing with Stress? It Starts with You

Join Dr. Scott Sheperd, a classical pianist with a PhD and over 35 years' experience in counseling, as he uses humor and insight to tell us the keys to dealing with stress and challenging times. Changing the way you think, he suggests, is a necessary first step in altering behavior, workplace culture – even how your citizens and customers view you.

9:45 – 10:00 Morning Break/Visit with Partners

10:00 – 11:00 Concurrent Sessions

Five Key Principles in IT Budgeting

Whether your municipal office is large or small, you'd probably like to have a better handle on computer, software and related costs. Attend this workshop, and you've come to the right place. Often IT support is seen as large and complex, but it doesn't have to be with the right understanding and systematic approach.

Presenter: Chris Claudio, Chief Executive Officer, Winxnet, Portland.

Municipal Broadband: Gathering Needed Information

A recent trend in Maine involves towns and cities considering “municipal broadband” networks. Of course, an important first step involves doing all the necessary fact-gathering up front.

Presenters: Liza Quinn, Tilson Technology Management, Portland; Page Clason, Resident, Town of Isleboro.

Critical Importance of Cyber Security

Like it or not, we work in risky technological times. Every month, if not more frequently, we read about computer breaches involving businesses, health-care organizations – even the U.S. and other national governments. This workshop takes a practical look at what municipalities and other organizations can do to minimize their computer risks.

Lead presenter: Michelle Lopilato, Marketing Executive/Specialty Lines Vice President, HUB International New England, Wilmington, Mass.

Using LiDAR Data to Create 3D Building Footprints

More and more GIS professionals are utilizing LiDAR data to leverage the third dimension in their GIS projects. The increased availability of these LiDAR point clouds, combined with the development of powerful software to efficiently and effectively utilize this data, have provided the means for GIS professionals to create 3D data layers that were virtually unheard of a few years ago. We will demonstrate some of the advanced tools that automatically extract and delineate vector features, including buildings, from classified LiDAR points. Finally we will explore several 3D visualization tools for generating a realistic fly-through perspective of the 3D vector models

Presenter: David McKittrick, Senior Application Specialist, Blue Marble Geographics, Hallowell.

Asset Management and GIS

Managing assets such as storm water, water and wastewater systems and roads and facilities within a community is an increasingly important task for municipalities. However, communities are discouraged when presented with the costs and time required for incorporation of asset management systems. Without an accurate in-

ventory system to track and manage assets, it can be difficult to mitigate potentially costly and sometimes life-threatening impacts to infrastructure. This presentation will identify the key components of an asset management system and how communities can utilize a Geographic Information System (GIS) as a starting point for effective asset management.

Presenter: Rick Martens, James W. Sewall Co., Old Town.

11:00 – 11:15 Morning Break/Visit with Partners

11:15 – 12:15 p.m. Concurrent Sessions

Use Your Website to Improve Your Reach

OK, so you have a municipal website and you probably have limited resources to update it constantly. Here are some simple yet effective ways to improve your website's reach to citizens, visitors and seasonal residents.

Presenter: Nancy Marshall, Founder and Chief Executive Officer, Nancy Marshall Communications, Augusta.

Municipal Broadband: What Might Work for Your Community

Nothing teaches better than experience. Come listen to these presenters as they talk about what worked, and what they would have done differently, in considering and launching municipal broadband networks.

Presenters: Chris Mitchell, Community Broadband Networks; Richard Bates, Manager, Town of Rockport; Chris Dumais, Director of Information Technology, City of South Portland.

Call for Action: 3D Elevation Opportunities for State, Local Governments

The Department of the Interior's U.S. Geological Survey and other federal agencies are launching a 3D Elevation Program (3DEP) designed to bring federal agencies, academia, corporate entities, states, tribes and communities together to develop advanced 3-dimensional mapping data of the United States. These data and related tools will be used in the areas of flood risk management, storm water management, mitigation of coastal erosion and storm surge impacts and as an essential component of supporting action on climate resilience and adaptation. The presentation will outline the results of the NEEA study and provide state and local officials the details they need to prepare for, support and take advantage of 3DEP.

Presenter: Dan Walters, National Map Liaison for ME, MA & RI, USGS.

Community & Regional Benefits (Think \$) from Geospatial Data

Even if you do not have GIS capacity, your community can gain important benefits from this technology. This session will explain the benefits and cost savings available to your community when you access current geospatial data or participate in state and regional initiatives. Whether you are extending a sewer line, building or renovating a road or courting economic development; current imagery, elevation data and other geographic information are required to determine feasibility, estimate development costs and evaluate return on investment. Regional and state data acquisitions save hundreds of thousands of dollars compared to each community purchasing data on their own.

Presenters: Joe Young, Executive Director, Maine GeoLibrary Board; Sam Moffat, Project Director of Geospatial Services, Woolpert; Claire Kiedrowski, Mapping Analyst, KAPPA Mapping, Inc.

12:15 – 1:30 Buffet Luncheon

12:45 – 1:30 Luncheon Address

Mapping the Great Indoors: Leveraging GIS to Manage Facilities

Our facilities represent one of our largest and most important investments, yet we only recently began applying the power of GIS to help manage and protect those assets. Stu Rich will describe how organizations large and small around the world are realizing new value from their GIS investments by bringing the map under the roof for a variety of purposes including space planning, maintenance operations, environmental health and safety and public safety.

Speaker: Stu Rich, Principal/GIS Practice Manager, PenBay Solutions, Topsham.

1:30 – 1:45 Afternoon Break/Visit with Partners

1:45 – 2:45 Concurrent Sessions

The Importance of Social Media

What is social media, how does it work and how important is it in your town or city's communication plan? These key questions will be answered, and additional strategies will be offered, at this valuable and insightful workshop.

Presenter: Ebb Walton, Online Marketing Specialist, Nancy Marshall Communications, Augusta.

Municipal Broadband: New England Success Stories

Other states are experimenting and pioneering with community broadband networks as well. There's always strength in hearing tales, lessons and strengths from people "from away." Come, listen and find out for yourself.

Presenters: Peter d'Errico, Chair, Broadband Committee, Leverett, Mass.; Bill Gassman, Broadband Working Group, Moultonborough, N.H.; Joshua Broder, Tilson Technology Management, Portland.

Key Environmental Data at Your Fingertips

This session will provide code enforcement officers, planners, Realtors and many others a great overview of data available online from DEP websites. Maine Department of Environmental Protection (DEP) has more than 50 million data records, ranging from oil and hazardous waste contamination to biological sampling information to information on natural resources, water quality data, invasive plant locations, vernal pools, and wastewater facilities. Conference participants are encouraged to review information on its maps and data page, and come prepared to ask questions.

Presenters: Bruce Hunter, Environmental Hydrogeology Manager, Maine Department of Environmental Protection; John Lynam, GIS Analyst, Maine Department of Environmental Protection.

Streamline Workflow by Web-Enabling Spatial and Non-Spatial Data

Have you been thinking about ways to streamline your workflow and reduce redundancies? Have you been using only paper forms and files for a long time and worry about how those records would be re-created "if" something were to happen? Have you had your Excel spreadsheet go haywire one too many times? This presentation will cover ways to convert both non-spatial and spatial data into a hosted web-based platform, and will cover a variety of platform options both proprietary and non-proprietary. Municipalities of all sizes in the Bangor area are making the switch to hosted solutions – be it VoIP phones, web GIS maps, archiving paper documents or using an app on a smart phone to gather data or report issues. Is it time for you to consider this for your municipality?

Presenters: Gretchen Heldmann, GISP, LF – Senior Project Manager, Corson GIS Solutions; Ray Corson, Owner, Corson GIS Solutions, Portland.

2:45 – 3:00 Afternoon Break/Visit with Partners

3:00 – 4:00 Concurrent Sessions

Social Media: Municipal Dos and Don'ts

Social media are popular among citizens, so Facebook, Twitter, YouTube and other communication vehicles have become effective ways to communicate – if used properly. This session provides municipal officials and staff with important information that will help in planning and implementation of a social media strategy. The discussion will include sample policies, potential benefits and possible concerns, a review of key laws and legal considerations.

Presenters: Eric Conrad, Director of Communication & Educational Services, Maine Municipal Association; Amanda Meader, Staff Attorney, Maine Municipal Association; Detective Dorothy Small, City of Ellsworth Police Department.

Municipal Broadband: FirstNet and What It Means for Municipalities

FirstNet will be the first high-speed wireless, broadband data network dedicated to first responders. Come and hear where Maine is in the planning process, what public safety broadband means to local government officials and how municipalities can participate.

Presenters: Elissa Tracey, Tilson Technology Management, Portland; Clarence Young, James W. Sewall Co., Old Town; Elisabeth Madden, Winbourne Consulting.

Municipal Level Climate Change Planning

This session will cover work that the Maine DOT, Department of Agriculture, Conservation and Forestry and the Department of Inland Fisheries & Wildlife have been engaged in to develop tools to be used at the municipal level for climate change planning. The Maine Geological Survey of DACF has completed sea level rise inundation mapping for 4 sea level rise scenarios and potential hurricane inundation mapping for Category 1 and 2 hurricanes for the entire coast. Come hear how many of these programs, including the Municipal Planning Assistance Program of DACF can benefit your town or city.

Presenter: Elizabeth Hertz, Director, Municipal Planning Assistance Program.

MaineDOT's Online MapViewer

Maine DOT has a three-year work plan detailing all its planned transportation improvement projects. All this information and much more is available on MaineDOT's online Map Viewer. This presentation will provide an overview of functionality, features, and data sources, making this a valuable tool for municipal officials and managers, regional governments and partner organizations. All you need is a standard internet browser, some time and interest. Questions welcome!

Presenter: Nate Kane, Maine Department of Transportation.

4:05 – 5:00 Concurrent Sessions

Municipal Broadband: Nuts and Bolts to Ensure Your Development Project Succeeds

FairPoint and other presenters will discuss recent municipal broadband development trends, explore the impacts in Maine and review how municipalities should solicit proposals for broadband services. Learn how a municipality can best connect their constituents while considering the short- and long-term fiscal implications and evaluating the administrative and technical components of the decision.

Moderator: Mike Reed, Maine state president, FairPoint Communications. Presenters: Dan Boutilier, IT Director, City of Portland; presenter from Preti Flaherty, TBA.

GovOffice User Group

Calling all GovOffice Maine clients: This annual meeting of the GovOffice User Group gives you the opportunity to meet with GovOffice staff to discuss advancement and new design solutions, as well as the opportunity to provide feedback and ask questions.

Presenter: Ross Heupel, Marketing Director, GovOffice

MEGUG Scholarship/Grant Recipient Presentations & Business Meeting

2015 Municipal Technology Conference

Thursday, May 7, 2015 – Cross Insurance Center, Bangor, ME

(Sponsored by: Maine Municipal Association & Maine GIS User Group cosponsored by the Maine GIS User Group • In cooperation with: ConnectME Authority)

ATTENDEE REGISTRATION FORM



Registration Type *(please check ONE):*

- MMA Member Municipality/Patron/Non-Profit/State Agency-\$70.00
 Non Member Municipality-\$140.00
 MEGUG Member-\$70.00 / ConnectME Authority Affiliate-\$70.00 / Business Representative-\$100.00

Billing Information:

Full Name: _____

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Billing Address: _____

City, State, Zip: _____

Phone: _____

Email: _____

Name Badge Information *(Name badge will read as indicated here):*

First Name: _____

Last Name: _____

Primary Title: _____

Employer: _____

Payment Options: Send invoice* Check will be mailed** Payment Enclosed** PO #: _____

*(*You will be invoiced after the Conference – **Please send a copy of this registration form with payment)*

Fax registration form to: (207) 626-5947 **Mail form to:** Convention Registration, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Please make check payable to: Maine Municipal Association.

Overnight Rooms:

An overnight room block has been set up at the Holiday Inn in Bangor for attendees and sponsors at the rate of \$99.00/night (plus tax) until April 20th. To make your overnight reservation, please call the Holiday Inn at (207) 947-0101 and reference the Municipal Technology Conference.

Questions & Cancellations

If you have any questions regarding registration, please call Educational Services at 1-800-452-8786 or 623-8428. Notification must be given at least 72 hours before the conference to receive a refund (minus processing fee). **All** cancellations are subject to a \$10 administrative fee for processing.

In order to ensure your complete participation, we would appreciate your informing us of any special requirements you may have due to a disability.

2015 MMA & Affiliate Training Calendar

KEY TO WORKSHOP SPONSORS

MMA	Maine Municipal Association	MMTCTA	Maine Municipal Tax Collectors' and Treasurers' Association
MACA	Maine Animal Control Association	MSFFF	Maine State Federation of Firefighters, Inc.
MAAO	Maine Association of Assessing Officers	MTCCA	Maine Town & City Clerks' Association
MBOIA	Maine Building Officials & Inspectors Association	MTCMA	Maine Town, City and County Management Association
MCAPWA	Maine Chapter of American Public Works Association	MWDA	Maine Welfare Directors Association
MCDA	Maine Community Development Association	MeWEA	Maine Water Environment Association
MFCA	Maine Fire Chiefs' Association	MLGHRA	Maine Local Government Human Resources Association

MARCH

3/3	MMTCTA Tax Lien Procedures	Orono—Black Bear Inn	MMTCTA
3/9	 MTCCA Town Meeting & Elections—Title 30A MTCCA Town Meeting & Elections—Title 30A- Video Conference	Augusta—MMA	MTCCA
3/9		Machias—Sunrise County Economic Council	MTCCA
3/12	MMTCTA Tax Lien Procedures	Portland—Keeley's Banquet Center	MMTCTA
3/13	MWDA Basic GA	Houlton—Town Office	MWDA
3/19	MBOIA Membership Meeting/Training	Portland—Fireside Inn	MBOIA
3/24	Managing Freedom of Access Requests	Augusta—Maine Municipal Association	MMA
3/26-3/27	MFCA Annual Conference	Newry—Sunday River, Grand Summit Hotel	MFCA
3/27	MeWEA Ski Day	Newry—Sunday River	MeWEA
3/27	MTCMA 36th Annual Statewide Manager Interchange	Bangor—Hilton Garden Inn	MTCMA
3/30	Local Planning Boards/Boards of Appeal	Ellsworth—General Moore Community Center	MMA

APRIL

4/2	MCAPWA Spring Training	Waterville—T&B's Celebration Center	MCAPWA
4/3-4/4	MACA Annual Meeting/Training	Bangor—Hollywood Slots	MACA
4/7	MLGHRA Managing the Difficult Employee/ Effective Discipline	Augusta—Maine Municipal Association	MLGHRA
4/8	Elected Officials Workshop	Saco—Ramada Inn	MMA
4/9	Grant Writing & Funding	Augusta—Maine Municipal Association	MMA
4/14-4/16	MCAPWA Supervisory Leadership for Public Works I	Gorham—Municipal Offices	MCAPWA
4/17	MeWEA Spring Conference	Auburn—Hilton Garden Inn	MeWEA
4/21	Local Planning Boards/Boards of Appeal	Waldoboro—Soule-Shuman Memorial Post #4525 VFW	MMA
4/22	MMTCTA Basic Excise Tax	Houlton—Town Office	MMTCTA
4/23	 MTCCA Vital Records MTCCA Vital Records- Video Conference	Augusta—Maine Municipal Association	MTCCA
4/23		Machias—Sunrise County Economic Council	MTCCA
4/24	MAAO Northern Maine Spring Training	Caribou—Northern Maine Development Commission	MAAO
4/27-4/28	MWDA Spring Training Seminar	Bangor—Hollywood Slots	MWDA
4/28	MTCCA New Clerks	Waterville—Waterville Elks & Banquet Center	MTCCA
4/29	Labor & Employment Law	Augusta—Maine Municipal Association	MMA
4/30	Elected Officials Workshop	Lewiston—Ramada Inn	MMA

Online Registration is easy: <http://www.memun.org/TrainingResources/WorkshopsTraining.aspx>

2015 MMA & Affiliate Training Calendar

MAY

5/5	Local Planning Boards/Boards of Appeal	Bridgton—Town Office	MMA
5/7	Municipal Technology Conference	Bangor—Cross Insurance Center	MMA
5/12	MAAO Boards of Assessment Review	Augusta—Maine Municipal Association	MAAO/MMA/MTCMA
5/12	MAAO Boards of Assessment Review— Video Conference	Caribou—Northern Maine Development Commission	MAAO/MMA/MTCMA
5/14	Elected Officials Workshop	Machias—University of Maine	MMA
5/14-5/15	MMTCTA Annual Conference	Orono—Black Bear Inn	MMTCTA
5/18-5/19	MBOIA Code Conference	Sebasco Estates—Sebasco Harbor Resort	MBOIA
5/19-5/21	MCAPWA Supervisory Leadership for Public Works II	Gorham—Municipal Offices	MCAPWA
5/29	MTCCA Licensing	Augusta—Maine Municipal Association	MTCCA
5/29	MTCCA Licensing— Video Conference	Caribou—Northern Maine Development Commission	MTCCA

JUNE

6/2	Personnel Practices	Augusta—Maine Municipal Association	MMA
6/4	MCAPWA Highway Congress	Skowhegan—Fairgrounds	MCAPWA
6/16	1st Annual Municipal HR Conference	Waterville—Thomas College	MMA
6/18	Local Planning Boards/Boards of Appeal	Bangor—Spectacular Event Center	MMA
6/18	MWDA Advanced GA	Augusta—Maine Municipal Association	MWDA
6/23	New Managers Workshop	Augusta—Maine Municipal Association	MMA/MTCMA
6/23	MMTCTA Cash Management	Orono—Black Bear Inn	MMTCTA
6/25	Notary Public Workshop for Municipal Clerks	Augusta—Maine Municipal Association	MMA
6/30	Elected Officials Workshop	Bethel—Bethel Inn	MMA

JULY

7/7	Verbal Judo	Augusta—Maine Municipal Association	MMA/Affiliates
7/21	MTCCA Municipal Law for Clerks	Augusta—Maine Municipal Association	MTCCA
7/21	MTCCA Municipal Law for Clerks— Video Conference	Caribou—Northern Maine Development Commission	MTCCA
7/23	MBOIA Membership Meeting/Training	Augusta—Maine Municipal Association	MBOIA
7/24	MFCA Membership Meeting/Training	Hope—Hope Fire Station	MFCA
7/24	Customer Service Excellence for Public Employees	Augusta—Maine Municipal Association	MMA
7/28	MMTCTA Payroll & 1099 Procedures	Augusta—Maine Municipal Association	MMTCTA
7/29	Elected Officials Workshop	Waldoboro—Soule-Shuman Memorial Post #4525 VFW	MMA
7/30	MTCCA Vital Records	Caribou—Caribou Inn & Convention Center	MTCCA

AUGUST

8/12-8/14	MTCMA 70th New England Management Institute	Newry—Sunday River, Jordan Hotel	MTCMA
8/19	MMTCTA I've Got the Job, What Now?	Houlton—Town Office	MMTCTA
8/20	MTCCA New Clerks	Portland—Fireside Inn	MTCCA

SEPTEMBER

9/2-9/4	MAAO Fall Conference	Sebasco Estates—Sebasco Harbor Resort	MAAO
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Online Registration is easy: <http://www.memun.org/TrainingResources/WorkshopsTraining.aspx>

2015 MMA & Affiliate Training Calendar

9/10	MTCCA 20th Networking Day & Annual Meeting	Waterville—Waterville Elks & Banquet Center	MTCCA
9/11-9/13	MSFFF Annual Convention	Belfast Area—Point Lookout	MSFFF
9/16-9/18	MeWEA Fall Convention	Newry—Sunday River, Grand Summit Hotel	MeWEA
9/18	MWDA GA Basics	Augusta—Maine Municipal Association	MWDA
9/24	MBOIA Annual Membership Meeting & Training	Gray—Spring Meadows	MBOIA

OCTOBER

10/7-10/8	79th MMA Convention	Augusta—Augusta Civic Center	MMA
10/20	Managing Freedom of Access Requests	Saco—City Hall	MMA
10/22	Grant Writing & Funding	Bangor—Spectacular Event Center	MMA
10/29	Local Planning Boards/Boards of Appeal	South Portland—Best Western Merry Manor	MMA

NOVEMBER

11/5	MMTCTA Municipal Law for Tax Collectors & Treasurers	Orono—Black Bear Inn	MMTCTA
11/9	Fair Labor Standards Act	Augusta—Maine Municipal Association	MMA
11/12	MMTCTA Municipal Law for Tax Collectors & Treasurers	Augusta—Maine Municipal Association	MMTCTA
11/17	Social Media Dos & Don'ts	Augusta—Maine Municipal Association	MMA
11/17	Social Media Dos & Don'ts- Video Conference	Caribou—Northern Maine Development Commission	MMA

DECEMBER

12/8	Roles of Elected Officials & Municipal Managers	Gray- Spring Meadows	MMA
12/10	MBOIA Membership Meeting & Training	Lewiston- Green Ladle	MBOIA
12/11	MWDA Winter Issues	Augusta—Maine Municipal Association	MWDA

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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PEOPLE

Old Orchard Beach resident **Denise Clavette** has been hired as the Town of Yarmouth's first economic development director, as the town looks for new ways to attract business and encourage economic development. Clavette started her new position in late January. Clavette previously worked for 15 months as executive director of the Kennebunk-Kennebunkport-Arundel Chamber of Commerce. She worked as Brunswick business development manager from 2009 to 2013.



Chad Foley (right)

Aroostook County Deputy Sheriff and former Caribou police officer **Chad Foley** was honored in February with the Life Saving Award presented by the Maine Chiefs of Police Association. Foley's quick action is

believed to have saved the life of a man who was lying on the roadside and turning blue from an unsuccessful attempt to hang himself. Foley, a Van Buren native, has worked in law enforcement for 19 years. He was working for Caribou when the September 2014 incident occurred. Foley was surprised when a newspaper called him about the award because he had tried to keep it secret.

Off-duty Brunswick Police Sgt. **Paul Hansen** recruited a team of detectives in February to dig out the doorway and driveway for an elderly woman who had not been able to get out of her house for 10 days. The woman, who recently lost her job, had saved \$25 for a man to plow her out after the final storm, since she could only afford to pay once. The man she hired told her there was too much snow for him to handle and left her to own wits. She called 911 as a last resort. The police did not identify themselves until she asked as they were finishing up -- the men did the job in an hour with shovels and a snow blower. "I put on my boots and went outside, and there were four or five of them (clearing snow)," the woman told a reporter. "I said 'I don't have any money,' and they just

said, 'No, no, no, just go inside and get warm.'" Joining Hansen were Detective Sgt. **Marty Rinaldi** and detectives **Bill Moir** and **Rich Cutliffe**.

Old Town Police Chief **Donald O'Halloran** announced he will retire after nearly 50 years in law enforcement, first with the City of Bangor and the last 26 as Old Town's chief. O'Halloran joined the Bangor police in January 1969 and, after 20 years of shoe-leather work, he was promoted to lieutenant and chief of the detective's division before being recruited by neighboring Old Town.



Julie Rosenbach

who worked for the U.S. Department of Environmental Protection as a specialist liaison, was selected from a pool of 135 candidates that hailed from 30 states and five countries. Rosenbach spent the past eight years working as sustainability manager for Bates College in Lewiston.

Lebanon Rescue Chief **Jenny Sheriff** quit her post in late January. Sheriff cited personal reasons and time constraints are key reasons for her decision. Selectmen used the opportunity to merge the fire and rescue departments under **Daniel Meehan**, who was recently sworn

in as the town's fire chief. Officials said Meehan had agreed to oversee both department staffs.

South Thomaston Administrator **John Spear** will retire effective May 8, he announced in February. The former Waldoboro manager also worked as the business director for former SAD 50 before taking his present job. Spear has served as a town selectmen several times over the past decade and agreed two years ago to manage the town for a couple of years. His wife, a teacher, will retire in June.

Longtime Selectman **Jay Warren**, saying it was time to "move on," resigned his position on the Boothbay Harbor board. Warren was re-elected in May 2014, but after selectmen accepted his resignation in late January, he left his final meeting early. Warren has served the resort town for 40 years as a firefighter, EMT and elected official. Selectmen will not hold a special election, but rather wait until regular town meeting to fill the seat. Warren served as vice chairman at the time of his resignation. The board elected longtime selectman and former board Chairman Bill Hamblen for the position.

Chris Young has been named Rockland deputy police chief, replacing Wally Tower, who retired in January. Young has been with the department since 1996 and has held many positions over the years, including training officer, detective and crisis intervention team coordinator. Young also is a certified instructor at the Maine Criminal Justice Academy. ■

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

STATEWIDE

A study released in February by the University of Arizona reported that the sea level from New York to Newfoundland, encompassing the entire Gulf of Maine, has risen four inches in two years. Researchers said the spike was the only two-year increase of that magnitude to show up in the study. Several municipalities along the Maine coast already have created local study committees to try to learn the possible effects of the rising sea levels on their waterfronts, marinas and other coastal special features.

CAMDEN

The town has filed a lawsuit against the developer of a 13-lot residential subdivision that still has not finished the project and allegedly failed to install a permanent sewer connection or put \$18,750 into escrow to ensure the sewer work was done. The developer faces a daily fine of \$100 to \$2,500, depending on the outcome of the lawsuit.

ETNA

Poor road conditions, speed and visibility led to a historical 75-car pileup on the Carmel-Etna line on Interstate 95 on Feb. 25, involving cars, trucks, tractor-trailers and even school buses. Remarkably, there were a few seriously hurt drivers, but no fatalities. Off-duty EMTs and other health-care professionals checked from car to car and performed triage when necessary. About 50 cars were towed away and another 20-plus were driven from the mound of metal. Maine Department of Transportation cameras were used to help analyze what happened.

FARMINGTON

The town has become the latest Maine municipality to earn the state designation as "certified business-friendly." About 30 Maine cities and towns have achieved the status, which helps communities partner with private enterprises, as well as promoting collaborative efforts to attract business. The other municipalities that have been certified business-friendly since Gov. Paul LePage initiated the program in 2010, are: Auburn, Augusta, Bath, Belfast, Biddeford, Brewer, Bucksport, Caribou, Cumberland, Ellsworth, Fairfield, Farmington, Fort Kent, Guilford, Hermon,

CORRECTING THE RECORD

Editor's note: An article in the February Maine Townsman mischaracterized a key piece of solid-waste related legislation developed by the Municipal Review Committee. The correction below was written by the MRC in consultation with Maine Municipal Association. The correction represents MRC's point of view on the article. We at MMA appreciate the input and response.

Due to a misunderstanding, an article entitled "Can organics help solve state's pressing solid waste problem?" in the February edition of *The Maine Townsman* contained a mischaracterization of one of the pieces of legislation that it summarized.

The article briefly discussed a bill sponsored by state Sen. Andre Cushing at the request of the Municipal Review Committee (MRC). The MRC is a non-profit association of 187 Maine municipalities which has represented the interests of those cities and towns in relation to their use of the Penobscot Energy Recovery Corporation (PERC) plant in Orrington since 1991.

While the article suggested that the intent of Sen. Cushing's bill was to direct increased waste from these communities to landfills, the legislation is actually part of a more comprehensive project the MRC is pursuing which will ultimately reduce the amount of waste being directed to landfills from current levels.

MRC is developing a new processing facility in Hampden to replace PERC, which will increase recycling of its members' municipal solid waste and then process the remainder to make biofuels. Only residuals from this process will be sent to landfills and this proposal is projected to reduce landfill usage from the current 110,000 tons a year to 30,000-40,000 tons each year.

Sen. Cushing's bill is only one component of this overall MRC effort to replace PERC with a solution that reduces landfilling, keeps tipping fees affordable for the member communities and advances the state's goals in its solid waste hierarchy policy.

Kennebunk, Lewiston, Lincoln, Madison, Pittsfield, Poland, Presque Isle, Richmond, Saco, Sanford, Sherman, Southwest Harbor, Topsham, Van Buren, Wells and Westbrook.

FRIENDSHIP

Anglers in this picturesque peninsula town have had to take down their "Gone Fishin" signs since most of the boats have been frozen in the ice for three weeks as of late February. About 75 boats were iced-in. Although the Coast Guard came with its ice-breaker to help, the wind and tides would not allow the cutter to move the ice.

LEWISTON-AUBURN

Officials from the Twin Cities hope a local lawmaker's bill will push ahead an effort to bring rail service back to central Maine. The bill estimates the cost of engineering and environmental impact studies to cost about \$1 million. The state presently owns a rail line that winds its way from Portland to Danville Junction in Auburn. Officials hope if

the state agrees to the project, the federal government will also help fund the project.

SINCLAIR

Bay Communications II of Boston will erect a second cellular tower in far northern Maine to provide better wireless infrastructure now and for the future. About a month ago, the company erected a cell tower in St. David; they now will build a 199-foot tower in Sinclair. Both communities are located in the St. John Valley along the Canadian border in Aroostook County.

SWEDEN

About 20 registered voters agreed to use \$55,000 in surplus funds during a February special town meeting to finance public works, public safety and general government. Residents also approved using \$9,000 from 2014 surplus to pay for legal costs related to a zoning issue. Voters elected Bruce Taylor to fill the remainder of an open seat that expires in 2015. ■

MUNICIPAL BULLETIN BOARD

MARCH 24

Managing Freedom of Access Requests: Augusta

This timely workshop is aimed at helping municipal staffs, designated "Public Access Officers," elected and appointed officials understand Maine's FOA law, why requests are filed and how to deal with them appropriately. The afternoon workshop will be held on March 24 at the MMA Conference Center in Augusta. Registration begins at 1:30 p.m. and the workshop will conclude at 4:30 p.m.

Presenters include: Amanda Meader, attorney with MMA's Legal Services Department; Jay Feyler, Manager in the Town of Union; and, Eric Conrad, MMA's Director of Communication & Educational Services. Cost for the workshop is \$35 to MMA members.

MARCH 25-27

2015 Joint Fire Conference: Newry

The Maine Fire Chiefs' Association & Maine Fire Protection Services Commission will hold their 2015 Joint Conference at the Sunday River Grand Summit Resort & Conference Center in Newry on March 25-27.

The kickoff and featured speaker will be Dr. David Griffin, captain and training officer with the City of Charleston, S.C. Fire Department. He will speak on: "In Honor of the Charleston 9: A Study of Change Following Tragedy." Also featured will be David S. Becker, chair of the EMS Section of the IAFC and lead consultant for Smallwood & Associates.

MARCH 27

36th Annual Statewide Manager Interchange

The Maine Town, City and County Management Association will hold its annual Interchange on March 27 at the Bangor Hilton Garden Inn. This year, there will be strong focus on safety, injury prevention, health compliance and wellness.

Cost for the one-day Interchange is \$75 for members (\$90 for late registrants) and \$130 for non-MTCMA mem-

bers. The event starts with registration at 8 a.m. and will end at 3 p.m.

MARCH 30

Planning Boards/Boards of Appeal: Ellsworth

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 March 30 at the General Moore Community Center in Ellsworth.

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.

APRIL 3-4

MACA Annual Meeting & Training Day: Bangor

The Maine Animal Control Association will hold its two-day business meeting and training event on April 3-4 at the Hollywood Casino Hotel & Raceway in Bangor. Members in good standing are encouraged to attend the business meeting, which begins at 6 p.m. on Friday, April 3.

Registration for the April 4 training day begins at 7:30 a.m. and the conference is scheduled to end at 4:30 p.m. Among the many topics to be explored: legal updates; town expectations; rabies updates; the Feral Pig Program; wildlife issues; and, meth lab safety. Cost is \$50 per person for the annual Training Day. That fee includes training, lunch on Saturday and a certificate of attendance.

APRIL 7

Managing Difficult Public Employees

The Maine Local Government Human Resources Association will hold a workshop on managing difficult employees on April 7 at the MMA Conference Cen-

ter in Augusta. Four attorneys with the law firm Bernstein Shur – Matt Tarasevich, Kai McGintee, Kelsey Wilcox and Glenn Israel – will be the presenters.

Topics include: union and non-union employees; excessive use of sick time or tardiness; under-performing workers; excessive breaks; and, poor personal hygiene. Cost for the session is \$65 for MLGHRA members and \$75 for non-members. The workshop starts with registration at 8:30 a.m. It is scheduled to end at 2:15 p.m.

APRIL 8

Elected Officials Workshop: Saco

Attorneys and staff from MMA's Legal Services and Communication & Educational Services departments will lead a workshop for Elected Officials on April 8 at the Ramada Inn in Saco. 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 and \$110 for non-members.

APRIL 9

Grant Funding & Writing: Augusta

Municipal elected officials, grant writers and economic development professionals are among those encouraged to attend a day-long workshop on Grant Funding & Writing at the MMA Conference Center in Augusta on April 9. The session starts with registration at 8 a.m.

Among the presenters: Robert Nadeau, of the U.S. Rural Development Program; Tammy Knight, Maine Office of Community Development; and, Chris Shrum of Shrum Associates. Cost for the program is \$75 for MMA members and \$150 for non-members. ■

All of the upcoming workshops can be found on the MMA website. Use the following link:
<http://www.memun.org/TrainingResources/WorkshopsTraining.aspx>

LEGAL NOTES

Liability for Mailboxes

For roadside mailboxes, it's been a real buster of a Maine winter. Smashed by plows, buried in record snow and ice, many have been damaged beyond repair. But are municipalities liable for replacing them? Surprisingly perhaps, the answer is no.

Although there is no law directly on point, mailboxes are considered encroachments in the public way, placed there per U.S. Postal Service specifications but solely at the owners' risk. Municipalities tolerate them, but they are not legally liable for damage to mailboxes caused by highway maintenance operations.

Nevertheless, some municipalities do help people repair or replace damaged mailboxes and avoid similar damage in the future. Take the Town of Brunswick, for example.

Brunswick's website gives detailed, illustrated instructions on how and where mailboxes should be installed to allow convenient access for mail delivery without impeding highway snow removal. Tips include: suspending the mailbox from an extended arm-type post with at least 42 inches of clearance above grade; placing reflective material and the property address on its side; and locating it as far back from the curb or shoulder of the road as possible.

Brunswick also agrees to repair or replace damaged mailboxes as it deems appropriate and as time permits. (Again, note that this is not legally required.) However, it does not replace or reimburse for custom mailboxes or ornate or granite posts, or existing mailboxes or posts in poor condition, or newspaper boxes.

Policies such as these promote good community relations and may, in the long run, work to minimize the aggravation and expense of wintertime damage to mailboxes. For a closer look at Brunswick's mailbox guidelines, go to <http://www.brunswickme.org/departments/public-works/winter-services/mailbox-information/>.

For answers to other frequently asked questions about municipalities and winter liability, see "Winter Liability FAQs," *Maine Townsman*, "Legal Notes," January 2003. (By R.P.F.)

Borrowing from Reserves

Question: We have some reserve funds

set aside for long-term needs like replacement of vehicles, repairs to municipal buildings, and so forth. Can we avoid the cost of a short-term loan for operational expenses by borrowing from our own reserves instead?

Answer: No, at least not without authorization from the municipal legislative body (town meeting or town or city council).

As we've noted here before, municipalities are authorized by statute to establish reserve or non-lapsing funds for a variety of purposes (see "Reserve Funds," *Maine Townsman*, "Legal Notes," December 2004). They are established by the legislative body, but they are managed by the municipal officers (selectmen or councilors).

As the trustees of reserve funds, the municipal officers are strictly limited to expending them only for the specific purpose for which they were established. Our belief is that even a temporary "loan" of reserve funds for some other purpose could breach the municipal officers' fiduciary duty to safeguard them solely for the purpose for which they were originally set aside. (The unauthorized use of reserve funds is a Class C crime, see 30-A M.R.S.A. § 5802(4).)

The legislative body, however, could permit the use of reserve funds for other purposes, either by authorizing a short-term "loan" and providing for future repayment or by permanently reallocating the funds. Whether doing so would be reasonable or prudent would depend on the circumstances. For example, raiding a "rainy day" fund established for financial emergencies could have adverse consequences on a municipality's credit rating.

If temporary funding for current operations is the problem, perhaps a better solution is a tax anticipation note. As we pointed out recently, they're widely available and typically at low interest rates, and they don't require approval from the legislative body (see "Tax Anticipation Notes," *Maine Townsman*, "Legal Notes," December 2014). (By R.P.F.)

Court: Lowest Bid Wins

A recent Maine Superior Court decision confirms the advice we gave here almost two years ago – that in a competitive bid for goods or services, the contract must be awarded, if at all, to the lowest

MUNICIPAL CALENDAR

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

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

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

APRIL 20 — Patriot's Day, third Monday in April, a court holiday (4 MRSA §1051).

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

responsive and responsible bidder (see "The Lowest Bid," *Maine Townsman*, "Legal Notes," April 2013).

In *Landry/French Construction Co. v. Lisbon School Dept.*, CUMSC-AP-2014-52 (Me. Super. Ct., Cum. Cty., Dec.1, 2014) (Mills, J.), the low bidder on a school construction project sued after the school committee hired the next lowest bidder, ostensibly because their architect preferred that firm. The Court reviewed the applicable statute (5 M.R.S.A. § 1743-A, requiring "competitive bids" for school construction projects exceeding \$250,000) and held that since it mentions no other factors or criteria, the law requires the contract to be awarded based on price alone, provided the low bidder is otherwise qualified.

As we noted in April 2013, if other factors such as reputation or experience are to be considered, they should be specified as additional criteria in the invitation to bid or request for proposals.

As we've also noted before, if preference is given to local bidders, it should be minimal and disclosed in advance

LEGAL NOTES

(see "Local Preference in Competitive Bidding," *Maine Townsman*, "Legal Notes," May 2009).

For more "best practices" in procurement, including sample bid and proposal documents, contracts, etc., see our "Information Packet" on contracts and competitive bidding, available free to members at www.memun.org. (By R.P.F.)

Setting Permit Fees

Question: Can the selectmen or some other board or official establish or alter fees for locally required permits such as building and land use permits?

Answer: No, not unless an ordinance delegates this authority to them.

Permit fee-setting is a function of the municipal legislative body (either town meeting or town or city council). That body may, by ordinance, either set permit fees itself or delegate the authority to another body or official, such as the selectmen. If the ordinance itself sets the fees, they may be changed only by amending the ordinance.

Such an amendment could take several different forms. For instance, one option would be to amend the ordinance to authorize the selectmen, after notice and hearing, to adjust permit fees from time to time as they may deem it necessary and reasonable. This avoids the necessity of amending the ordinance each and every time fees need to be adjusted.

Another option would be to establish a fixed fee to cover the average cost of reviewing permit applications and then add the actual cost of notices, professional consultations, etc. This ensures that the applicant fully pays those costs that are apt to vary depending on the application.

A third alternative would be to establish a single, fixed fee to cover both the average cost of review as well as the average cost of notices, consultants, etc. This one-size-fits-all approach is simpler, but it may not account for all actual costs, so we do not necessarily recommend it.

For the record, Maine law states that local fees for land use permits may not exceed the reasonable cost of processing, review and administration of permits (see 30-A M.R.S.A. § 4355).

The same rule applies, under common law, to other types of licenses and

permits. This is what distinguishes a "fee," which pays for services, from a "tax," which raises revenues. (Maine's municipalities have no "home rule" authority to impose a tax, see Me. Const., Art. IX, § 9.)

Also note there are numerous State-required licenses and permits that are administered locally. The fees for these may be set by statute, ordinance or the municipal officers (selectmen or councilors) depending on the license or permit. For details, see our *Municipal Licensing & Permitting Manual*, available free to members at www.memun.org. (By R.P.F.)

New IRS rules for Election Workers

There are new IRS rules on tax withholding and reporting for election workers, including local ballot clerks.

While compensation for part-time election workers is taxable, it is not subject to income tax withholding. Compensation of \$600 or more in a calendar year is reportable on Form W-2, however.

As for FICA (Social Security and Medicare) taxes, for those covered by a Section 218 Agreement, withholding is governed by the agreement. But if there is no such agreement, an election worker earning less than \$1,600 in a calendar year is not subject to FICA withholding.

For full details, see: <http://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/Election-Workers-Reporting-and-Withholding>

Questions should be directed to Robert "Bob" Westhoven, the IRS government employer representative for Maine, at (207) 784-6988 or robert.c.westhoven@irs.gov. (By R.P.F.) ■

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