

November 2013

# maine townsman

The Magazine of the Maine Municipal Association



**HAZARD OR PROTECTED?  
Cities Restrict Panhandlers,  
Legal Challenges Await**

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# maine townsman

The Magazine of the Maine Municipal Association

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**COVER PHOTO:** Freelance Photographer Jill Brady took this shot in October at a busy intersection in the City of Portland.



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# A Message From MMA



By Eric Conrad, Editor

## More on Municipal Teamwork in Maine

*“Talent wins games, but teamwork and intelligence win championships.” – Michael Jordan*

Isn't it funny that a legendary basketball player from Chicago is credited with a saying that so aptly fits baseball's 2013 World Series champions, the Boston Red Sox? Aren't we all still feeling good about what just happened with them? A team dismissed by "experts" prior to the 2013 season bonded early, dug deep during a grueling season, grew beards together – and outplayed 29 other teams, many of them deemed more talented, to claim Boston's third World Series in 10 years.

Albert Einstein must be turning in his grave. The 2013 Red Sox defied fundamental mathematics, proving that the whole can indeed exceed the sum of its parts.

So it goes with smart municipal teamwork.

On P. 7 of this month's Townsman, you can read once again about municipal collaboration in Maine. The latest example comes from the Town of Farmington, where Manager Richard Davis doubled down in a way, asking for municipal aid to support a Canadian municipality.

Farmington is a sister community to Lac Megantic, Quebec, the site of a major rail explosion last July that killed 47 people and destroyed a downtown. After the tragedy, Davis reached out to his municipal teammates in Maine, hoping to help Lac Megantic. More than \$32,000 was raised, led by the Town of Brownville (pop. 1,250) in Piscataquis County.

It was fitting that Brownville showed the way.

Back in June 2012, when a powerful but isolated storm swept through Brownville – turning roads into debris piles, causing \$4 million in damage and claiming a motorist's life – Town Manager Matthew Pineo took to the Internet and

asked Maine communities to help (*Maine Townsman*, August-September 2012). Boy, did they. From police officers to public works crews, dump trucks to shovels, resources poured in.

It was no real surprise. Sophia Wilson, Town Manager in Orono (formerly in Brownville) and past President of Maine Municipal Association, put it simply in her Townsman column a few weeks later: "This is what we municipal officials do when we can."

Soon we will enter 2014, an election year in Maine and elsewhere. Without a doubt, there will be debate about government spending at all levels during tight financial times. Frustrated by huge federal deficits and the state's biannual budget mess, some candidates will turn on Maine cities and towns. "If they just consolidated more....," they will say, as if that would solve federal or state spending problems.

They will have a point – to a point. Maine cities, towns and schools can do more together. But one of the least-told stories out there is how much municipal collaboration already exists, and has for decades. Regional solid

waste and fire-rescue organizations led the way, but there are countless examples of shared municipal services, positions and expertise. Every town and city has them. MMA Senior Legislative Advocate Kate Dufour penned a report in 2011 that detailed 558 examples of formal collaboration in Maine. We know there are many more.

As Michael Jordan's saying goes, and the 2013 Red Sox proved, *both* teamwork and intelligence are needed to win championships. The best of collaborative government comes from the ground up, where local citizens and officials know what will work, what won't and what will be accepted.

*(Note: MMA will take a special look at municipal collaboration at its next Annual Convention, Oct. 1-2, 2014 at the Augusta Civic Center. If you have examples to share, please call Eric Conrad, Director of Communication & Educational Services, at: 1-800-452-8786 or email, [econrad@memun.org](mailto:econrad@memun.org).)* 



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**C O U N S E L O R S   A T   L A W**

# Shipping News: Rail Safety Draws Attention

By Lee Burnett

Since the Lac Megantic rail tragedy in Quebec last July, various messengers have delivered plenty of worrisome dispatches.

- Maine's capacity to respond to an oil spill has declined by 40 percent since 2003, according to the Maine Department of Environmental Protection.

- Some 90 percent of Maine's 1,100-plus miles of rail are not equipped to handle the weight of rail cars fully loaded with oil, according to the Maine Department of Transportation.

- The Montreal Maine and Atlantic train that exploded was mislabeled as carrying a less volatile liquid than it actually was carrying.

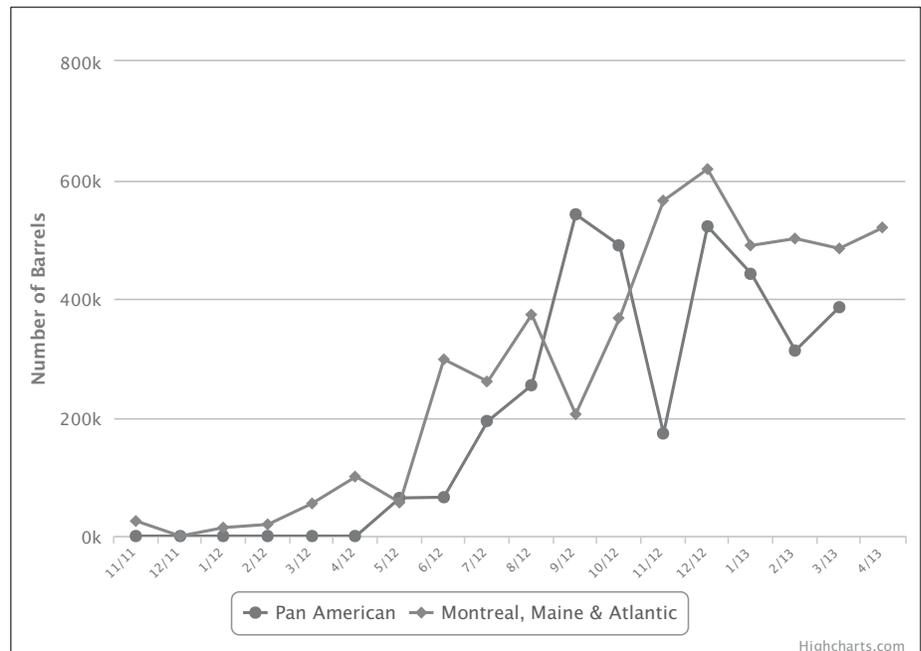
- The tanker cars that exploded – an older model commonly used throughout the industry – are prone to rupture in an accident, according to the National Transportation Safety Board, which has recommended upgrades.

Any doubts that rail safety touches a chord in Mainer dissolves for Farmington Town Manager Richard Davis when he started raising funds to help residents of Lac Megantic, a sister town to Farmington. He expected to raise \$10,000 locally, but he put the word out through the municipal grapevine and was gratified to raise \$32,000.

Donations from Brownville, a small Piscataquis County town two hours away, stood out. "That's a small community, not particularly affluent, and they did contribute a significant amount," he said.

The donations from Brownville do

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



not surprise Town Manager Matthew Pineo. Brownville identifies with Lac Megantic because they share a connection to the Montreal Maine and Atlantic MA rail, he said. A company repair yard is in nearby Milo. "We have a rich railroad history," he said. "It could possibly happen here."

Maine has seen a sudden surge in oil shipments by rail as a result of the development of oil fields in the Bakken formation in North Dakota. Shippers have sidestepped the stalled construction of pipelines by opting for more expensive rail shipments. The oil comes through Maine en route to Irving Oil refineries in New Brunswick.

## BY THE NUMBERS

Shipments through Maine climbed from 25,000 barrels in 2011 to five million barrels in 2012, according to

Maine's Department of Environmental Protection. But the 18-month boom for Maine railways may be short-lived. Montreal, Maine and Atlantic filed for bankruptcy and has ceased operations. Pan Am Railways, another major freight carrier, has also reduced oil shipments through Maine, although the exact volumes have not been reported to the state since April due to a change in interpretation of reporting requirements. Irving now sends most Bakken crude by rail to the port at Albany, N.Y., where it is loaded on tankers and shipped down the Hudson River, then up the New England coast to New Brunswick, according to CBCNews. Maine is bypassed.

"We've got a breather," said Lindsay Newland Bowker of Stonington, a public interest researcher who watchdogs rail safety in Maine. She said shipments could easily resume if the price

## Maine DOT: Rail System Looks Good

A safety review ordered after the Lac Megantic rail crash found no significant dangers in Maine's 1,100-mile rail system, according to Maine's Department of Transportation.

"Although no form of transport is free from all risk, it appears that existing rail safety practices are adequate, and that a tragedy like Lac-Megantic will not occur in Maine if the private railroad operators follow their own safety practices and those of the (Federal Railroad Administration)," according to the report issued Sept. 30.

In his review, Transportation Commissioner David Bernhardt relied largely on safety reports from the Federal Railroad Administration, the agency that oversees rail safety in this country. Between January and June, there were 1,201 observations of Maine railroads by federal officials, many of them focused specifically on risks posed by the increased transport of crude oil. Inspectors had examined Montreal, Maine & Atlantic tracks just days before the crash.

From July through September, there were an additional 581 observations conducted. As was the case before the accidents, defects to existing tracks were identified but none required any shutdowns.

— Lee Burnett

differential changes, which would send oil on Pan Am tracks through some of the most densely populated communities in Maine.

Even before Lac Megantic, some people worried whether Maine has a handle on rail safety. Concern stems from the recent surge in oil shipments over tracks in less than tip-top condition.

Six people were arrested for blocking Pan Am tracks in Fairfield on June 27 in a protest over the practice of hydro-fracking. The Oakland Town Council began asking questions when

it realized how many oil trains were passing close to both Messalonskee Lake and downtown Fairfield.

"It (train) goes through the middle of town... You can't ignore the potential for huge impact," said Town Manager Peter Nielsen. The Maine Department of Environmental Protection addressed many questions about the adequacy of training for an emergency, he said. "Quite a lot of protections are in place, but it's a matter of concern to Oakland."

Maine has a dedicated cleanup fund that covers salaries and training

for first responders, as well as equipment and maintenance, ensuring a quick reaction and shielding taxpayers from the costs of litigation to recoup the costs of an initial spill recovery.

It's funded by a three-cent tax on crude oil and refined petroleum. But revenues from the Maine Coastal and Inland Surface Oil Clean-up Fund have dropped from \$6.7 million to \$3.7 million over the past nine years. This is due to less oil flowing through pipelines from South Portland to Montreal (the pipeline oil had been far greater in volume than the new oil by rail) and because the Maine Legislature has diverted funds for other uses, according to Jessamine Logan, spokeswoman for Maine DEP.

To replenish the dwindling clean-up fund, Rep. Ryan Tipping-Spitz, D-Orono, introduced legislation to raise the tax by another 1.5 cents if the fund falls below \$2 million. Maine DEP testified against the measure, citing cost-cutting measures and the availability of other funds. Dismayed, Tipping-Spitz said the cost of a cleanup does not go down just because less oil is coming through the state.

"Unfortunately, the response needs to be there, no matter how the risk goes up and down over time. One spill is one spill. You still have to respond," Tipping-Spitz said.

There's no way of knowing what hazardous materials are shipped through Maine. The only material for which records exist is petroleum because it's taxed according to volume.

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## FAIRFIELD CUTS A RAIL DEAL

For years, folks in Fairfield complained to no avail about the condition of railroad grade crossings in town. Tracks and town roads cross in seven places, many in the downtown. "I get a complaint a couple times a month – broken muffler, bent rims," said Town Manager Joshua Reny.

Starting in 2010, the town approached track owner Pan Am Railways about repairs. "They (Pan Am) made it very clear they would not be able to make repairs without some kind of assistance," said Reny. "They did admit some (crossings) were pretty bad. They would schedule them for maintenance and get to it when they could."

Fairfield was reluctant to contribute local tax money toward the reconstruction, said Reny. The town's predicament is a common one, according to Nate Moulton, head of the freight rail for Maine. He said there are 800 grade crossings of varying safety risk in Maine. It costs nearly \$300,000 to bring a single crossing up to the highest standard of safety with a new crossing panel, gates, flashing lights and signs.

"Everybody would love to get their crossing fixed for free," said Moulton. The state has a safety improvement fund, but its \$1.2 million per year is spread pretty thin. We can only do three or four per year. We don't make a big dent (in the total.)"

"Quite frankly, how Fairfield rose to the top is that they were able to work a compromise," Moulton said.

Fairfield took a hard look and decided it could abandon two crossings because the car traffic was so light, an assessment that was supported at public hearings. The town's willingness to close two crossings – resulting in lower overall risk – convinced the state to upgrade the remaining crossings. Altogether, the state will contribute "nearly \$1 million," Pan Am will upgrade one mile of track, and Fairfield will contribute \$10,000 or more to repair approaches, according to Moulton and Reny.

"Everybody gave a little," said Reny. "We gave up something permanent (two crossings) in exchange for something temporary – the improvements – but the Town Council felt it was worth it."

– Lee Burnett

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The volumes of all other hazardous chemicals and volatile substances are considered confidential business information protected by law. That is not supposed to be a problem because every tanker car carrying hazardous materials must be labeled with the appropriate hazmat placard according to its emergency risk. In that way, first responders are alerted to the kind of precautions to take in handling the emergency.

### MISLABELING

But mislabeling happens. The Canadian investigation into the Lac Mégantic explosion revealed the 72-car train was carrying a Packing Group II product. However, it was labeled as a Packing Group III product, a less volatile designation. The lead Canadian investigator said proper labeling would not have affected firefighters' response.

Still it is unsettling, said John Simko, Greenville's town manager.

"That mislabeling was very disturbing to us," said Simko. "If it's not the product listed, you could potentially apply the wrong remedy." Simko said Greenville experienced multiple train



*This was the scene of a derailment in the Town of Oakland in 1983. (Submitted photo)*

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derailments in the late 1990s that were of great concern because of the proximity of rails to a school, hospital and nursing home.

“God forbid if there was a major accident. Great damage could be done,” he said.

The mislabeling of tanker cars is the subject of a current petition before the Pipeline and Hazardous Materials Safety Administration. As a result of a fatal mislabeling incident in Cherry Valley, Ill., in 2009, the Village of Barrington (Illinois) is petitioning the safety board to require railroads to provide to first responders real-time electronic information on the location and identity of all hazardous materials. The petition also seeks to have older model tankers, so-called DOT-111s, retrofitted as the NTSB recommends.

The condition of tracks in Maine varies widely. There are sections of rail for the Amtrak Downeaster built to handle speeds of 79 mph. Elsewhere, where only freight goes, tracks are maintained to a much lower standard.

It’s rare for freight tracks in Maine to handle speeds faster than 25 mph and on branch lines speeds are often less than 10 mph, according to Jeff Pitcher, a state rail inspector who works under federal authority. Tracks in poor condition can be made perfectly safe by lowering train speed and that happens often, he said. Railroads issue daily bulletins of the location of speed restrictions, he said.

“Train speeds vary all along entire routes... it can change every 10 minutes, up and down the whole line,” said Pitcher.

Likewise, tracks can be made safer by lightening the load. Passenger trains, for example, are allowed to travel at higher speeds than freight trains because they are lighter. While 90 percent of Maine tracks cannot support a modern, fully loaded tanker car at 285,000 pounds, that doesn’t mean oil trains coming through Maine are unsafe, said Nate Moulton, head of freight rail for Maine. It means the trains cannot be fully loaded.

“The real difficulty is it handicaps the shipper,” said Moulton. “It’s not necessarily a big concern for safety... It’s an economic thing, not a safety thing.”

The American Society of Civil Engineers gives Maine a grade of “C” overall for the condition of its rail infrastructure and says conditions “improved slightly” between 2008 and 2012, according to its 2012 report. The ASCE notes that improving the condition of Maine’s rail infrastructure depends on forging additional public private partnerships, on an improved economy and a higher volume of traffic.

“Most of Maine’s railroads are privately funded and future investment to improve the system is directly tied to demand for service increases,” according to the report. Maine ranked 48<sup>th</sup> in freight tonnage in 2009.

For now, oil shipments are bypassing Maine. So, too, is a stream of revenue that could help finance infrastructure investments. [ml](#)



*Another look at the derailment in Oakland in 1983. (Submitted photo)*

# Welcome to the Maine Resource Recovery Association

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

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

Some of the goals of the organization are as follows:

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

*The September 2013 issue of The Scrap Paper, MRRA's newsletter, is now available for download:*

**<http://www.mrra.net/wp-content/uploads/2013-September-Scrap-Paper.pdf>**

## Our Mission

**The Purpose of Maine Resource Recovery Association is:**

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

**The Goals of the Association**

- Promoting communication and information exchange between Association members and markets, equipment suppliers, State and Federal Government, and other State and national associations, as well as information exchange among members.
- Compiling and development of other information relevant to the education and technical assistance of Maine solid waste management and recovery programs.
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# Panhandling Ordinance Sparks Legal Challenge

By Douglas Rooks

Where should the line be drawn between public safety and freedom of expression? That question will be addressed during a scheduled Nov. 19 trial in Federal District Court in Portland, as the City of Portland and the American Civil Liberties Union's Maine chapter argue opposite sides in a case prompted by the city's new ordinance on public gatherings.

The issue that created the ordinance – and others proposed or enacted in Lewiston and Biddeford – is panhandling, which, according to police, has proliferated since the economic downturn began in 2008 and shows no sign of letting up.

The Portland City Council voted 6-0 in July to enact an ordinance barring anyone from occupying medians of public ways, whether to panhandle, protest or simply hang out. The ordinance took effect the following month.

Trish McAllister, neighborhood prosecutor for Portland who works directly with police, said it was important for city officials that the ordinance be “content neutral” – that is, not single out any particular activity, such as panhandling or soliciting donations.

Some of the medians in Portland are quite narrow – one on Marginal Way, near the Franklin Arterial, is barely two feet wide. People holding signs and asking for money represents a significant safety hazard, city officials believe. Other medians, such as those on Franklin Arterial itself, are wider and often host political signs as well as political demonstrations.

Portland's attempt to ban gatherings on all medians, not just ones where hazards would seem obvious, makes the ordinance “over broad,” according to Zachary Heiden, legal director for Maine ACLU, who is helping prepare the federal court case.

Heiden explains that the U.S. Supreme Court has interpreted First Amendment freedom of assembly to encompass many forms of expression, including solicitation. The court tends to apply “strict scrutiny” to law that might hinder such expression, and requires that such laws be “narrowly tailored” to prohibit only conduct that causes other problems, such as endangering public safety.

Heiden says the Portland ordinance is too broad both geographically – on some medians it may be safe to demonstrate – and because it covers such constitutionally sensitive activities as political protest. Two of the three plaintiffs in the case, he noted, have demonstrated on Portland medians, while the third is a homeless person who has solicited donations.

## CONTROLLING TRAFFIC

McAllister says the city can defend the ordinance persuasively, however. “At least in Portland, it's clear that medians are not public gathering places, but are only there to control and direct traffic,” she said. That protests have previously taken place there is not a key legal point, she said.

The history of ordinances trying to control panhandling, or begging, as it is sometimes labeled in older statutes, goes back a long way. Portland has had a prohibition against panhandling for years, but McAllister said it has been successively amended to make it less, not more, restrictive, as

the city has recognized civil liberties concerns.

The original ordinance referred only to soliciting. It was later amended to refer to “aggressive” solicitations, and then changed to bar only “abusive” situations, she said.

Those who oppose the Portland ordinance say it stems more about people's discomfort with seeing panhandlers, and signs of poverty, than it is about safety. McAllister disagrees. She said police are frequently called after people standing on medians either walk or stumble into the travel lanes.

While documenting complaints for the court case, the city found that from January to May 2012, it received 101 complaints about median strip activity and 169 panhandling complaints overall. For the same months this year, there were 124 median complaints and 212 overall, a 23 percent increase over the previous year.

The prevalence of panhandling in seemingly dangerous places was what convinced the council to act, McAllister said. The previous year, the council rejected an almost identical ordinance, but this year approved it.

“Police were very diligent this time in documenting exactly where and how often it was occurring,” she said.

In addition to Marginal Way, narrow medians on St. John Street, near Congress Street and the Union Station Plazas, attract panhandlers and result in complaints, she said.

Zachary Heiden said the Maine ACLU warned Portland's council that the ordinance could be unconstitutional, “but they voted for it anyway.” He does not believe the restrictions can be legally justified and said that no accidents or collisions have re-

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

sulted from median activity so far. City officials concede the point, though they add the word “yet.”

Heiden said not all panhandling restrictions are impermissible. Most “aggressive panhandling” ordinances in Maine do seem related to safety, he said. “There’s a wide range of freedoms but it does not include, for instance, blocking the sidewalk or threatening behavior,” he said.

### CLOSELY WATCHED

He said the Portland case, along with one in Worcester, Mass., is being closely watched around the country.

“There have been literally hundreds of these ordinances enacted in the last few years,” he said. Defining appropriate limits will now fall to the courts, he added.

Portland also is considering an ordinance that would create a buffer zone around the Family Planning office on Congress Street, where right-to-life protestors have been active for almost two years. Heiden said that such buffer zones have been upheld by courts in other states because they were seen as necessary to allow clients of such clinics to safely access the

buildings.

Heiden is confident that the court will see the merits of ACLU-Maine’s arguments about the median ban. “People have been standing in medians for many purposes for many years, without any accidents,” he said. “We think that actual history will be important to what the court decides.”

Justice George Singal, who’s hearing the case, may render a prompt decision, because ACLU-Maine and the plaintiffs have asked for an injunction against the ordinance. In the meantime, the two sides came to an agreement last month where the city will not enforce the ordinance, except when a clear danger exists, in the period leading up to the court hearing.

Biddeford was moving the direction of a median ban but has held up proceedings until the U.S. District Court rules on the Portland issue, according to City Manager John Bubier.

The city council considered, but declined to pursue an “aggressive panhandling” ordinance because the more pressing issue seems to be medians in one particular location, where Route 111 (Alfred Avenue) enters town and intersects with the Maine

Turnpike entrance.

“There are six lanes of traffic in one direction, and four lanes in another, not counting turning lanes,” Bubier said. “The medians are very narrow and very exposed.”

While such locations might seem precarious, they are also highly visible, and in recent months have attracted a lot of people.

### BIDDEFORD CONCERN

“We’re concerned about what could happen if someone has stopped to talk, and other drivers have to go around them,” he said.

There have been complaints, and also some “scary” incidents, such as one in which a man fell into a travel lane in front of a police car which, fortunately, was not moving at the time, Bubier said.

He wonders what would happen if an accident did occur. “Would the city be liable for not safely maintaining the right of way?” he said. “You could argue that there was an obvious hazard and the city did nothing about it.”

That argument was cited by a minority of councilors who wanted to move ahead with the ordinance even



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while the Portland ordinance was under appeal.

Lewiston enacted a new ordinance concerning panhandling, but targeted specific activities on entire roadways, rather than just median strips, said City Administrator Ed Barrett.

Barrett notes that while public assembly is legally protected, municipalities can enact reasonable rules about the "time, place and manner" in which such activities are carried out.

### LEWISTON ORDINANCE

The ordinance, enacted Sept. 17, is so new that there has not been time to gauge its results. Barrett said Lewiston is watching the legal battle over the Portland ordinance, even though its provisions are different.

In Lewiston, concerns began when several elderly residents were accosted outside the post office by what they saw as threatening behavior by panhandlers. Council President Mark Cayer requested the ordinance and the council approved it unanimously.

The ordinance covers most of the places where drivers and solicitors could be in contact, Barrett said – "shoulder to shoulder" on roadways and parking lots. It also applies to the occupants of motor vehicles, not just those standing outside.

Officials in all three cities observe that they are not trying to eliminate panhandling, just regulate where and when it occurs. Sidewalks, for instance, aren't regulated under any of these ordinances.

"There were some incidents on sidewalks," said Portland's Trish McAllister, "but the city council didn't want to go there." Councilors decided that sidewalks are public spaces where safety hazards, if any, are much less evident.

"What we're focusing on is someone who is stopping traffic on a major arterial," said Ed Barrett in Lewiston. "That's where we see the hazard existing."

And in Biddeford, John Bubier said enacting such an ordinance would be a responsible action for the city. "We wouldn't be protecting the public safety if we ignored the risk," he said.

It remains to be seen whether a federal judge agrees. [\[m\]](#)



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# 2017 Key Year for Maine's 'Paper Streets'

By Dale McGarrigle

Something imaginary soon will require the attention of municipal planners from around the state of Maine: paper streets. In simplest terms, a paper street is a proposed way that is shown on an approved subdivision plan but has not been constructed.

What is the value of paper streets?

"The obvious benefit to the laying out and establishment of paper streets is for a proper, thoughtful, smart subdivision of land for residential, commercial or governmental purposes that provides the necessary access to the subdivided property," said Lionel Cayer, Augusta's city engineer.

"The old days of allowing multiple curb cuts along an existing road to lots that have narrow frontage, just to avoid the capital cost of a new road, are hopefully behind us. A new road provides for better layout of lots and provides for safer access to the new lots as well as establishes a quieter and less hectic environment within the new subdivision."

From the date of recording of a subdivision plan in the registry, the public acquires a right of "incipient dedication," which means that the municipality has a right to accept the paper street, once built (usually to town standards) as a town way.

A developer submits a subdivision plan which, presumably, is approved. Then, when the paper street is constructed to the standards prescribed by the municipality, it becomes a town road. Sounds simple, on paper.

But paper streets have existed in some communities for more than a century, often without any sort of legal definition, as the subdivision statute

in Maine didn't take effect until 1971.

So the Maine Legislature laid out some boundaries in a statute passed in 1987. Paper streets were divided into two categories, those in subdivisions recorded prior to Sept. 29, 1987, and those in subdivisions recorded on or after Sept. 29, 1987.

## YEAR BY YEAR

For the former category, those paper streets were deemed by law to be vacated by the public the later of 15 years after the date of recording, or on Sept. 29, 1997. The deemed vacation occurs if the streets are never constructed or, if constructed, they were never accepted as a town way or as a public utility or recreational easement. The municipal officers could extend the deemed vacation period by filing a notice of extension in the Registry of Deeds office. If an extension was claimed, it lasted for 20 years, and could be extended again for another 20 years (40 years total). A deemed vacation means that the right of incipient dedication is surrendered.

For the latter category, the Legislature granted towns the right of incipient dedication for 20 years from the date on which the subdivision was recorded, and can extend those rights for an additional 20 years. The 1987 law's time frames provided clarity that had been missing before.

"The primary advantage for the town and the neighbors is certainty as to the status of a paper street and knowing when it goes away without having to go to court to have that question determined," said Robert Osbourne, town planner for Hampden.

Many municipalities took advantage of a 20-year rights extension in 1997. That means those communities'

officials again will face the question of which paper streets are worth holding onto by September 2017, which is right around the corner in governmental terms.

So this is a question that some municipal officials say they should begin wrestling with now. Letting the town's rights run out might be the cheapest and simplest solution, but it may not be the most forward-thinking.

"In doing so, in many cases, the town and residents may miss the opportunity to pass the public benefits of potential access forward to future generations," explained Nat Tupper, Yarmouth's town manager.

"Especially in cases on old camp or cottage subdivisions that provide (or potentially provide) highly cherished access to the water that would be an unfortunate and irretrievable loss... There are real potential advantages that many of these paper streets offer, so just letting the clock run out may not be as cheap and painless as it appears."

In 1997, Yarmouth extended its rights to 108 roads or road segments. The Town Council began to take up each roadway segment (one development plan at a time) over the next year or so. In most cases, the council voted to accept a pedestrian and utility easement in the paper street, and then to vacate the remaining incipient public rights for a roadway. At least 42 paper streets or segments were vacated in whole or part by January 1999.

"By then, the Town Council was exhausted and decided to cease its efforts on the paper street project except on a case-by-case basis based by specific citizen requests," Tupper said.

Access became an issue in areas where incipient rights were to be va-

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*Dale McGarrigle is a freelance writer from Hampden and new contributor to the Maine Townsman, dalemcg820@tds.net*

cated.

"Some paper streets have been improved to the degree necessary for a lot owner to have driveway access," Tupper continued. "Those driveway improvements, however, do not grant exclusivity to the lot owner as the general public can still enter over and across paper streets and the other lot owners in the development plan that laid out the paper street still have rights even after the town vacates the general public interest."

Citizen worry was another concern with which town officials have had to deal.

"Back in 1997, some residents living with paper streets surprised the town by requesting that the town not vacate the general public interest in fear that some lot owners in the development would seek to assert a private and exclusive claim," Tupper said.

One resident offered to the Town Council: "We'd rather hate you than each other." Tupper translated: "It might have been a compliment; sometimes it's hard to know."

Yarmouth has found an innovative way to handle what would be paper

streets in new developments.

"We have seen very few new subdivisions in Yarmouth in recent years but when they do get submitted, we try hard to have them interconnect to nearby subdivisions and roads," Tupper said. "Invariably, there is strong opposition from the older neighbors and frequently a compromise position is established to create a pedestrian and bike connection in a 50-foot-wide strip (essentially a new paper street with a trail) that could, in the future, become a full street. In those cases, we seek to have the full 50-foot strip dedicated and deeded to the town so it would operate outside the 'paper

street' status."

#### AUBURN'S POLICY

In Auburn in 1997, officials extended the city's rights to paper streets in some 80 subdivisions, some with multiple streets. Most were never developed into city ways.

"I don't think any of those subdivisions were less than 20 years old," said Gary Johnson, Auburn's assistant city engineer. "The reason most were never accepted were grade or wetlands issues, things that made it difficult to develop the streets."

"In a lot of cases, the streets were put where they wouldn't be accept-

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ed by today's standards," added Eric Cousens, Auburn's director of planning and permitting.

Auburn started a fruitful policy concerning paper streets decades ago. Back in the 1970s, its assessors began assessing taxes on undeveloped streets, resulting in tax-acquired property for the city.

Some of these undeveloped streets found uses. The Falcon Creek condominium development on Talon Drive was restructured to follow an existing paper street. Two businesses abutting the tax-acquired Sweatt Avenue now have a shared driveway, thanks to the city.

New paper streets are less of an issue in Auburn these days. After having numerous subdivisions in the 1980s and '90s, Cousens said the city has seen very few since 2004, with none approved in the last three years.

Hampden has a handful of old paper streets still on the books, Osbourne said. The Bangor "suburb" has taken steps to limit the number of newer paper streets, the planner said. Hampden requires that building permits only be issued for buildings on new lots where there is frontage on a



*A dusty road winds through undeveloped land.*

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town-accepted way.

“Some towns may allow construction on planning board-approved streets that may not be completed or even constructed but Hampden established the town-way requirement to limit construction of houses in developments where the streets were not completed. That was seen as a safety, erosion control and neighborhood issue,” Osbourne said.

A financial incentive also leads to more paper streets being developed into acceptable town ways: “In this millennium, the Town of Hampden has required a liquid form of an improvement guarantee (rather than lots from the undeveloped subdivision) to insure that, if the developer fails to develop a street, the town has cash on hand to complete the task,” Osbourne said.

### HAMPDEN COMMERCE PARK

It’s possible for a street to be both an approved town way and a paper street. The Hampden Business and Commerce Park is being built in phases, so its circular way has a town way which ends in a cul-de-sac followed by an undeveloped paper street.

Waterville held onto rights for about 40 paper streets or portions.

“We retained our rights in paper streets primarily to avoid land-locking property, but there were other reasons as well,” said Ann Beverage, Waterville’s city planner. “We were not certain how many water and sewerage lines the districts owned without easements. Another issue arose in one neighborhood concerning the ownership of paper streets. A gentleman claimed to have purchased the paper streets from the original developer, so there were legal disputes to settle.

“For the most part, our paper streets were laid out on steep slopes or through wetlands, so they are not buildable today,” Beverage said. “A few have been vacated as people whose property abutted them acquired lots from other abutters, eliminating the access issue.”

The City of Bangor held onto rights for paper streets in seven old subdivisions. Examples of a couple of paper streets being converted into town ways can be found in the vicinity of the Bangor Mall. Hogan Road Extension, which intersects with Stillwater Avenue and Kittridge Road, leads to the loca-

tion of a new Wal-Mart Supercenter, while a former paper street is now the snaking driveway to the Parkade shopping center.

To help eliminate future paper streets, Bangor requires an improvement guarantee – a letter of credit or bond to cover the costs of the roads and utility and sewer lines.

Augusta extended its right to 21 paper streets in 1997, while 104 were automatically vacated by the law. “The advantage that we saw was that it disposed of a number of paper streets that were of no value to future land development,” said Cayer.

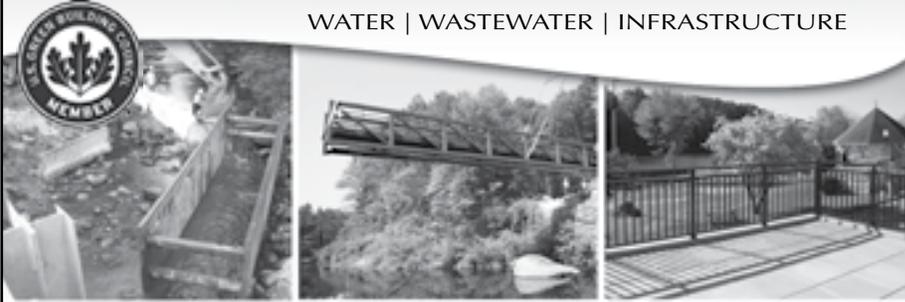
Augusta also has taken steps to make sure paper streets get developed.

“What Augusta requires now that it did not in the past is that a paper street shown on a subdivision plan must be fully designed and approved (not accepted) before a final subdivision plan may be approved by the Planning Board,” Cayer said. “The other requirement of a planned (paper) street is for a bond to be posted for estimated construction cost of the street before a subdivision plan may be recorded at the Registry of Deeds.”

Soon those old paper streets will be resurfacing, and municipal officials have some difficult decisions to make. “We’ll have to take a much closer look in 2017 at which streets to hold onto rights for,” said Auburn’s Cousens. [\[m\]](#)

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# How To Do Quality Manager Evaluations

By Rick Dacri, Dacri & Associates, LLC

The municipal manager's performance is critical to the success of any community. The selection, development and retention of the right manager – the individual who can lead the organization toward achieving its strategic goals – becomes the primary responsibility of the City or Town Council or Board of Selectmen.

At the same time, the manager's ability to work collaboratively with the board is of paramount importance and will determine the success of the manager, the Board and the community. It is for these reasons that an open dialogue, honest feedback, clear expectations and defined accountability standards must be in place.

Most managers and boards understand the value of performance management. Boards want to provide their managers candid feedback on their performances, allowing the opportunity to address problem areas. They understand that the review process provides an ideal time to clarify roles and expectations, set goals, open communication and enhance the relationship between the board and manager. The evaluation process ensures that both board and manager are in sync on the direction and goals of their community.

While most agree to the benefits of the evaluation process, many communities differ in their approaches, others question its effectiveness and some opt to not do it at all.

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*Rick Dacri is a workforce expert, management consultant, and author of the book "Uncomplicating Management: Focus On Your Stars & Your Company Will Soar." Since 1995 his firm, Dacri & Associates, has helped municipalities improve individual and organizational performance. He can be reached at [rick@dacri.com](mailto:rick@dacri.com) and [www.dacri.com](http://www.dacri.com).*

When the evaluation process is formalized, it usually includes a manager self-evaluation, board completion of an evaluation form, a review of goals and an evaluation interview with the chair. Some communities include a 360-degree review with input from department heads and citizens. Citizen input can be received both informally and formally through citizen surveys. Compensation decisions are sometimes part of the process, but are frequently handled separately as part of the manager's contract. On the other extreme, an informal approach to the entire process can be as simple as a discussion over coffee between the manager and the chair. Either approach can work.

Regardless of the approach, the review process works best when you have clear, agreed-upon purpose: Do you want to improve the overall purpose of your municipal government or the individual performance of your manager or board or all of these? All reviews should include:

1. More conversation with less emphasis on the form
2. Clear understanding of the respective roles of the Board and manager
3. Well defined expectations and goals

Getting a good performance from the manager takes more than the completion of an evaluation form. It requires clear job expectations and accountabilities and ongoing communication. While boards (and any manager of people) may find it uncomfortable to discuss performance issues, it is critical to the process. As with all open dialogue, it can only work when mutual trust and respect exists.

When the relationship is positive, one can more easily work through conflicts, disagreements and challenges. Success begins when the manager establishes positive rapport with the board. Disagreements and healthy debate will happen and should be encouraged and embraced. The genesis of most good ideas comes through these types of exchanges. However, it should never come at the expense of the relationship.

## STUMBLING OVER FORMS

The evaluation form itself can often create stumbling blocks. As one town manager stated, "Boards are not human resource professionals. Some have never managed staff, developed goals or written an appraisal. It's foreign to them. Forms can be intimidating and, frankly, most would prefer to not have to fill them out. What matters the most is the conversation."

Never make the form the focus of the appraisal. Asking board members to complete a long form is a huge time zapper and many members may either not do it or will find it difficult to complete in the time frame required. A process I recommend is the use of an independent third party to interview each board member and discuss the manager's strengths and areas in need of development. Each of the comments then can be summarized in a report and presented to the board, which can incorporate this into their evaluation, giving the manager candid but anonymous feedback on performance.

Role clarity and governance can be a thorn for many managers and boards. While the job interview may be the best time to outline respective roles, the evaluation interview should

be a time to review this again. Boards want their managers to manage their “company” in several ways: Carry out mandates; manage and grow staff; and, prepare the organization for the future.

Boards should be focused on their strategic roles – directing their attention to the future of the organization – and should leave the tactical aspects of managing to the manager. Effective boards should be focused on setting strategy and goals with the manager, providing ongoing developmental feedback, and serving as a conduit of information between the manager and the community.

### MANAGING & LISTENING

Today, communities face tremendous challenges and boards expect their managers to be adept and savvy enough to meet them. Beyond the expected municipal and business acumen, managers must have relational smarts. Town managers have many bosses. One mayor told me that his manager is an exceptional politician who has survived due to his political instincts and vision. He can work with advisory boards and the community, multiple unions and an exacting state legislature. When working in government, being political is a good thing. Like a doctor, managers must be able to take the pulse of the board and community and then prescribe the right course of action.

Good managers must be able to

listen. Many make the mistake of talking too much and not listening enough. They must stop dealing with things that happened in the past and focusing on issues generated by previous boards. Their focus must now be on today and tomorrow. They must understand that when a new board is elected, its priorities must be front and center, nothing else. Continuing to fight a previous fight is counterproductive.

Successful managers forge strong relations with board members, citizen groups and staff. But most of all, they must be clear about the board’s expectations and mandates, carry them out and ensure their success. Everyone must be on the same page with regard to the community’s mission, vision, values, direction and strategy.

The direction of the community is often set through the comprehensive plan or a strategic plan. It provides focus to both the board and the manager. While not all communities incorporate such goals in their managers’ evaluations, most do. The biggest frustration of many managers is not knowing their board’s priorities. When managers operate without clear direction or understanding, problems occur. The manager and board must be clear on the goals and priorities, and these goals should be consistent with the communities’ comprehensive or strategic plan. “Multiple conflicting priorities” is a recipe for disaster.

Evaluating the town manager is

integral to the success of the community. It will provide the manager the essential knowledge needed to drive the success of the business. To best help the manager, I recommend the board do the following:

1. Develop a professional job description for the manager. Though job descriptions do not cover everything, they provide a framework of what the board expects.
2. Develop a robust performance appraisal process and, if they have never conducted one, get assistance in writing and delivering the appraisal to the manager. This is key in ensuring accountability, setting direction, maintaining open communications and growing the manager.
3. Develop annual goals and objectives for the manager and tie them to your comprehensive or strategic plan. Keep your manager and municipality on track and focused.
4. Conduct a quarterly review with the manager on his/her progress toward achieving goals and objectives. Quarterly reviews ensure that you are not moving off course while also providing an opportunity to make critical “mid-course” directions. Managers want and need regular feedback.
5. Support professional development. A well-educated manager is needed to lead your organization. The upfront costs of education will yield a 10-fold return on investment through increased productivity, new ideas and an energized and engaged manager.
6. Conduct a board self-evaluation. This involves an annual review to assess whether the board is operating effectively and whether each member is focused on the big picture.
7. Work on the relationship. Everything you do or want to do is dependent on a positive relationship between the board and manager. Rapport is everything.

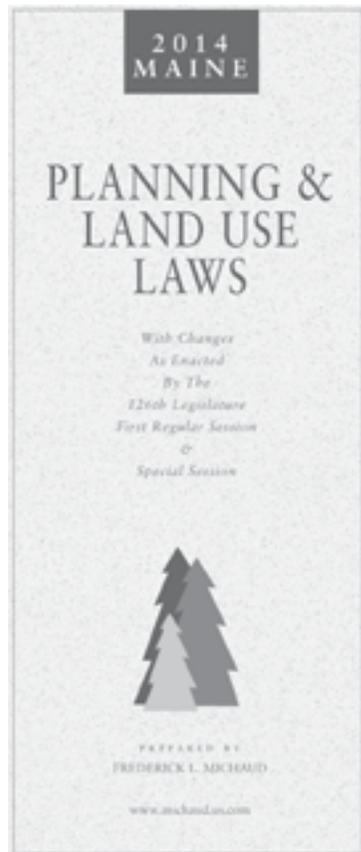
The best communities have highly productive, focused managers who



maintain positive working relationships with their boards. Doing so ensures organizational success and effectiveness. Add in timely, frequent and consistent feedback and your strategic goals will be achieved. This can only occur when boards and managers are in sync with the direction of their communities and share a positive rapport with each other. Like a well-rehearsed orchestra, when each comes together working in harmony, beautiful music emerges. Evaluating your town manager is a key instrument in making this happen.

*(To develop this article, I interviewed a number of town managers and board members and/or received information about their programs. Special thanks to: Jim Bennett, City Manager, Presque Isle; Richard Michaud, City Administrator, Saco; Michael McGovern, Town Manager, Cape Elizabeth; Stephen Eldridge, Town Manager, Lisbon; Steven Buck, City Manager, Sanford; Nathan Poore, Town Manager, Falmouth; Jessica Sullivan, Town Council, Cape Elizabeth; Teresa Pierce, Town Council Chair, Falmouth; Mark Johnston, Mayor, Saco; and Marston Lovell, City Councilor, Saco.)* 

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# Thomas College: Opportunities Abound

By Dr. James D. Libby, Academic Dean, and  
Dr. Emily Shaw, Assistant Professor of Political Science

Now more than ever, municipal employees must successfully provide more and better results while working with tight budgets and limited resources. That challenge, triggered by the recession of 2008 and extended by a long, slow economic recovery and persistently narrow revenue streams, presents difficult yet marvelous opportunities for those willing to fight the good fight.

The impacts of federal sequestration, the prospect of a federal budget overhaul and the potential effect of new education standards similarly create the potential for great change in the resources of, and demands on, the Maine municipal employee. Municipal officials are called on to forge new relationships, new functions and new governmental structures through collaboration and service changes. Despite these evolutions, local citizens continue to expect the delivery of high-quality and efficient services.

How do we adapt to these changes?

By recognizing the need to continually develop skills for managing change, risk and opportunity, municipal officials can take advantage of existing training opportunities in order to feel prepared in the face of uncertain conditions. It can be challenging for municipal employees to adapt and cope flexibly with new job requirements. For that reason, local

*For more information, municipal officials can contact Dr. Emily Shaw, faculty point-person for Thomas' new program, or Dr. James Libby, Academic Dean at Thomas College. The telephone number for Thomas College is 207-859-1111, or you can email shawe@thomas.edu or libbyj@thomas.edu for more information. Municipal employees interested in courses and degree programs can reach the Graduate and Continuing Education Division at 859-1102.*

officials in dozens of states are working in partnership with colleges and universities – institutions in the business of providing the most current available theory and technology to train students for dynamic work environments.

## 'MEMO OF UNDERSTANDING'

In order to help provide Maine's municipal employees with the expertise that they need to turn scarce resources into bright futures, officials from Thomas College and Maine Municipal Association recently entered into a "Memorandum of Understanding" designed to help municipalities with professional training needs and development and outreach opportunities for their members.

In the memorandum, Thomas College and MMA indicate a shared interest in promoting the educational opportunities and economic development in the State of Maine. Thomas College will collaborate with MMA and Maine towns and cities on the design, delivery and facilitation of educational programming to meet municipal training needs. This programming will begin immediately, and is set to include non-credit seminars, half-day workshops and college courses that lead to college degrees. The location and format of the professional development opportunities will be

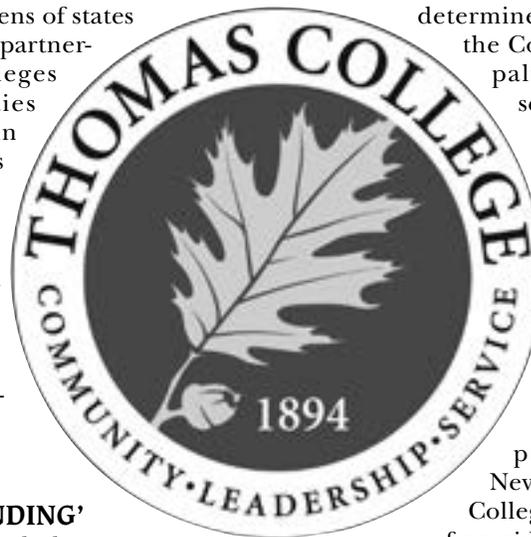
determined jointly between the College and municipalities that request services.

This partnership is not an exclusive one. Both Thomas College and MMA plan to work in concert with other institutions of higher education to achieve the best possible results.

Nevertheless, Thomas College's long tradition of providing higher education opportunities to thousands of students from Maine and New England should prove to be a valuable resource to you.

Founded in 1894, Thomas offers a rich professional studies curriculum for undergraduate and graduate students in a wide variety of programs. Three divisions house the academic programs: the Continuing Education and Graduate Division; the Department of Arts and Sciences; and, the Department of Business Administration.

The Continuing Education program features undergraduate bachelor and associate degrees, including



*Editor's Note: This is the first in a series of upcoming Maine Townsman articles from Maine-based institutions of higher learning that have expressed interest in municipal training, education and succession-planning needs.*

a variety of business-based degree programs and courses in public administration. It is in this program that courses will be offered to Maine municipalities, in formats including on-campus, on-site, online and blended. The Continuing Education program offers the best possible outreach to Maine communities, since this division also offers low-cost courses and degrees at the master, bachelor and associate levels.

The program deliverables include on-site training, half/full day seminars, and course and degree offerings. These development opportunities may be available in Augusta at MMA headquarters, in Waterville at the Thomas College Campus and in your municipality.

### PRICE RANGE

Trainings and seminars are offered at a variety of price ranges to suit municipal needs. Undergraduate college courses start at only \$650 per course, depending on the format. Graduate courses are priced at \$1,220 per 12-week semester, with one-week Thomas College intensive institutes priced at \$1,420. Those institutes meet from 8:30 a.m. to 4 p.m. and are typically offered in summer months.

It is important to note that MMA membership discounts are available for municipal employees.

The Graduate program features three degree levels – master, bachelor and associate. Master’s degrees currently include part-time and full-time opportunities in business and education. The MBA (part-time and accelerated), the MBA – Human Resource Management, the MBA – Health Care Management, the MBA – Accounting and the MBA – Project Management are the five business-based programs. The Master of Science in Education, the Master of Science in Education Leadership and the Master of Science in Education Literacy are the three graduate programs in education.

Two other divisions at Thomas College primarily target full-time, on-campus undergraduate students who have recently completed high school or community college diplomas. Criminal justice, education, political science (with a concentration in public administration), psychology, computer science and several other programs are housed in the Depart-

ment of Arts and Sciences. The Department of Business Administration offers a wide variety of business and technology degree programs as well as a business-based program in communications and public relations.

Eighty percent of Thomas students come from Maine, and 85 percent of Thomas graduates choose to stay and work in the state. Committed to quality teaching and to the application of technology at both the graduate and undergraduate level, Thomas offers broad opportunities for professional

development and promotes economic prosperity through long-term community partnerships. Our new partnership with MMA is a perfect example of this. We at Thomas College are excited to be working with you.

The College anticipates that subject areas of training interest will be in communications, public relations, public administration, management and accounting competencies, criminal justice, and several other areas. These opportunities are flexible, affordable, and tailored to your needs. 



*The entrance sign to Thomas College's campus. (Submitted photo)*





Donald Burke

Veteran Appleton Chair of Select Board **Donald Burke** was awarded the Ethel Kelley Memorial Award for distinguished public service during the Maine Municipal Association's annual convention in Augusta on Oct. 2. Burke has served as Appleton selectman for 26 years, including the past 19 years as selectmen chair.

In addition to his town service, his 28-year career to the U.S. Army Reserves service also was highlighted when he was presented the award, considered the highest honor bestowed by the MMA each year. In addition to his work as selectman, Burke has helped town residents in many ways, from serving food during public suppers to helping young residents find jobs. "This is a man with a compassionate and humble heart," Anne Swift-Kayatta, former MMA president and Cape Elizabeth town councilor, said in presenting the award to Burke. Swift-Kayatta said letters nominating Burke for the award also noted that Burke quietly checks on elderly and shut-in residents without seeking recognition.



Roger Audette

**Roger Audette** was named Maine fire chief of the year for his service to the City of Augusta. The award was presented to Audette, the city's fire chief for five years, by the Maine Fire Chiefs' Association at the MMA Annual Convention. Audette is the first Augusta fire chief to receive the award since former Chief Larry Bradley won the award in 2000. Audette, who was lauded for his concern for his firefighters and dedication to the city, has served the department for 20 years.

Male **Searsport volunteer firefighters** shaved their heads last month in

a show of support for the niece of a fellow firefighter, while a volunteer stylist added pink highlights to female firefighters' hair in a fundraising event for the firefighter's niece, who has been diagnosed with breast cancer. The event, which drew a crowd of people to the fire station, where the stylist de-locked the firefighters, raised \$1,200 for the 30-year-old cancer victim.



Steven Buck

Sanford City Manager **Steven Buck** accepted a seat on the 20-member Southern Maine Health Care Board of Trustees. The trustees serve as volunteers. Buck, while serving as manager of the City of Caribou, served on the Cary Medical Center board. Within months, Goodall Hospital in Sanford will merge with Southern Maine Medical Center in Biddeford. Buck served as Caribou manager for 11 years before accepting the Sanford job in 2012.



Sarah Cunningham

Windsor Town Clerk **Sarah Cunningham** was presented with the highest status a clerk can achieve, Lifetime Certification, during the Oct. 3 Networking Day of the Maine Town & City Clerks' Association, at the MMA Convention held in the Augusta Civic Center. Cunningham has served as Windsor clerk for 16 years.

**Jessica Jackson** has been named Naples animal control officer. Jackson holds a criminal justice degree and is certified to participate in large animal

emergency rescues. Jackson is co-director of the Safe and Sound Wildlife Rehabilitation nonprofit in Casco and Gray. She also serves as a member of the Cumberland County Animal Response Team.

The City of Augusta named **Steve Pecukonis** as its new downtown manager, as well as executive director of the nonprofit Augusta Downtown Alliance. Pecukonis was chosen from a pool of 19 candidates and started his job in late October. Pecukonis worked for 30 years as a self-employed management consultant, based in Brunswick, before accepting the Augusta post.

**Melissa Saggerer** was named director of the Berwick Public Library. Saggerer, who worked most recently in New Hampshire, holds a master's degree in library and information science and an undergraduate degree in anthropology and sociology.



Darren Woods

**Darren Woods** of Caribou has been promoted to director of the Aroostook County Emergency Management Agency, effective Oct. 21. Woods has worked for the agency since 1998, working his way up from part-time mitigation planner to public safety coordinator to deputy director. Woods will continue as fire chief of the North Lakes Fire and Rescue, which serves Cross, Mud, Long, Madawaska and Square lakes in central Aroostook County. He replaces Vernon Ouellette, who retired in mid-October.

**Correction:** Donald Bolduc was recently named Skowhegan deputy police chief, not patrolman, as reported in last month's People news. It was a writer's error. [\[M\]](#)

**PHOTOS:** 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:** As part of its ongoing Citizen Education program, Maine Municipal Association has updated and reprinted a full-color poster showing “Municipal Government in Maine.” The poster may be helpful – at town meeting or in other settings – in educating citizens of all ages about the basic functions of municipal government, including services provided and how and why funds are collected. If your town or city would like complimentary copies, please contact: Jaime Clark, Graphic Designer/Marketing Coordinator at 1-800-452-8786 or [jjclark@memun.org](mailto:jjclark@memun.org).

**Farmington:** The town will partner with nearby Chesterville to seek a federal grant to buy and share a 2014 fire tanker truck. The tanker is expected to cost \$250,000. Under the plan, the towns would split the required 5 percent of matching funds. The towns already provide mutual aid and the tanker would help both communities in areas where there are no hydrants.

**Hampton:** Selectmen have asked a state medical expert to take a second look at the issue of elevated cancer cases along Coldbrook Road, home of a former landfill and several trucking companies. Concerns were raised in 2002 by a resident who had counted 15 people with cancer living on the road. Ten years later, the number has increased to 33 people in 20 residences. The director of the Maine Cancer Registry discussed the concerns in an email to town officials in 2010, but selectmen requested in October that the director study the cases and meet with selectmen. In her 2010 email, Director Molly Schwenn said cancer cases in Hampden were in line with other Penobscot County communities, but higher than the state rates for certain cancers. Schwenn was expected to meet with selectmen by late November.

**Hanover:** Annual town meeting voters in late October agreed unanimously to pass the town’s \$199,000 municipal budget. A number of budget lines were lowered for the new fiscal year because of carry-forward funds. Hanover is the only Maine town to hold its annual town meeting so late in the year.

**Millinocket:** The town listed a record 41 tax-acquired properties for sale, town officials reported. Twenty-one properties were sold over the fall, with 14 homeowners regaining their properties by paying back taxes. The lowest sale price of the first round of property sales was \$1,900. Another 20 properties will be foreclosed and auctioned, pending council approval, later this month.

**Scarborough:** Despite a strong backlash by dog owners and a petition with 2,753 signatures, the town council in October voted against reconsidering a new leash law that bans unleashed dogs from all public property, including the town beach. The council vote was 3-3, which defeated a motion to reconsider. If the signatures submitted in late October are verified by the town clerk, the issue will be decided by referendum.

**Warren:** The state awarded a contract to a Massachusetts company that will clean up 27,000 tons of fiber materials and manufacture compost lumber that was dumped on a former rifle range 14 years ago. The state estimates the owners of the Route 90 property received as much as \$1 million to allow an Auburn-based factory to use the

rifle range as a dumping ground for the flammable material. A Somerville, Mass., firm plans to build an enclosed structure and hire eight to 16 workers to process the waste. The project could last through December 2016. Officials declined to foreclose on the property to protect the town against any liability.

**Windham:** Landowners along the Crooked River in Norway and Otisfield will be reimbursed 50 percent, up to \$500, for any effort to stop erosion into the waterway. The two-year financing program, which includes free technical assistance, is offered by the Cumberland County Soil & Water Conservation District. A 2011 survey conducted by the district found more than 150 areas where erosion was a problem in the watershed, which stretches 120 miles across western Maine from Bethel to Casco. The program will focus on keeping storm runoff from dumping into the river in the two towns where the most problems were found. The district won a federal grant to help finance the work, which will offer a second phase in the future for other communities. Partnering with the district are the towns of Norway and Otisfield, the Western Foothills Land Trust and the Portland Water District. 

## NEW ON THE WEB

Highlights of what’s been added at [www.memun.org](http://www.memun.org) since the last edition of the *Maine Townsman*.

- **Storm Water.** An attorney with the law firm Preti Flaherty summarizes changes to federal Storm Water regulations and writes about petitions filed with the U.S. Environmental Protection Agency that could affect Maine.
- **Climate Change.** Antioch University New England and the EPA will hold a regional conference on climate change and its municipal impact. The conference will be held in May 2014 at Manchester, N.H.
- **Transportation Responsibilities.** The state Bureau of Motor Vehicles presents a bevy of changes to state rules and laws that affect municipalities and their transportation-related duties.
- **Municipal Directory.** The latest edition of one of Maine Municipal Association’s most-read publications – the annual Municipal Directory – is out and available for order by members and the public.
- **General Assistance.** State laws also changed regarding GA rules, requirements and eligibility levels. Members-only access is required for this topic area.



# Municipal Bulletin Board

## PUBLIC SIDE OF PRIVATE SECTOR DEVELOPMENT

While some major proposals start with the private sector, they have major public impacts. How can municipal leaders use existing laws to balance the need for economic development and Maine jobs versus environmental and other concerns from citizens?

The law firm of Bernstein Shur and Maine Municipal Association are pleased to announce a special, half-day seminar to examine the legal aspects of private-sector development projects. Four attorneys, experts in municipal and regulatory law, will teach attendees about property tax implications, tax increment financing options, zoning laws and other matters to consider when business and industry propose a major project in your municipality. The seminar will be held on Dec. 10 at the MMA Conference Center in Augusta. Registration will begin at 8 a.m. The workshop is scheduled to end at noon. Cost is \$25 for MMA members and \$50 for non-members.

Among the specific topic areas to be explored: land use implications; property-tax implications; tax-increment financing; and, more. Speakers will include attorneys Mary Costigan, N. Joel Moser, Shana Cook Mueller and Philip Saucier, all from Bernstein Shur.

## PLANNING BOARD/BOA: LEWISTON

The Ramada Inn in Lewiston will be the site for a Local Planning Boards & Boards of Appeal workshop to be presented by an attorney from MMA's Legal Services Department on Dec. 3. The workshop is designed as a basic introduction to the legal rules governing decisions made by local planning boards and boards of appeal. While it is aimed at new board members, veterans may find attending the workshop to be a valuable refresher.

The presenter will explain jurisdiction issues, conflicts of interest, public notice requirements, site visits, the use of e-mail and other topics. The workshop begins with registration at 4 p.m. and ends at 8:30 p.m. A light meal is included. Cost for the event is \$50

for MMA members and \$100 for non-members.

## HUMAN RESOURCES: PEOPLE POWER

The Maine Town, City & County Management Association, along with the New Hampshire Municipal Management Association, will hold a day-long seminar at the Ramada Inn in Saco touching on: public-sector collective bargaining; handling employee terminations; and, employee evaluations.

Speakers include: Matthew Tarasevich, attorney with Bernstein Shur; Stephen E.F. Langsdorf, attorney with Preti Flaherty; and, Anne-Marie L. Storey, attorney with Rudman Winchell. The session begins with registration at 8 a.m. and is scheduled to end at 2:45 p.m. Cost is \$45 for MTCMA members and \$75 for non-members.

## ELECTED OFFICIALS: LEWISTON

Attorneys and staff from MMA's Legal Services and Communication & Educational Services departments will lead a workshop for Elected Officials on Dec. 12 at the Ramada Inn in Lewiston. 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 \$50 for MMA members and \$100 for non-members.

## MBOIA MEMBERSHIP MEETING

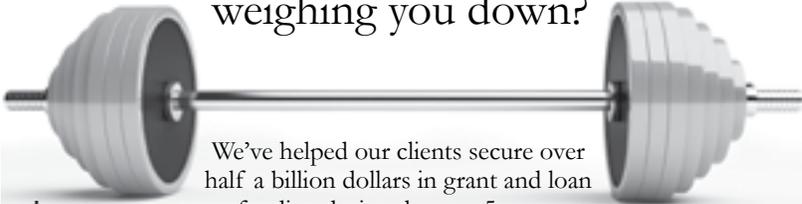
The Maine Building Officials Inspectors Association will hold its Annual December Membership Meeting on Dec. 12 at the Green Ladle, Lewiston Regional Technical Center, in Lewiston.

The event will begin at 8 a.m. with a Board of Directors meeting, followed by a members' social hour. At 10 a.m., speaker Rick Karg, president of R.J. Karg Associates, will speak about the Residential Ventilation Standard. Following lunch, the MBOIA Business Meeting will begin. It will conclude later that afternoon with a holiday raffle.

Cost for MBOIA members is \$20 for pre-registrants, \$30 for those who register after Dec. 2 or at the door. Cost is higher for non-members. [ME](#)

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

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## SURVEILLANCE VIDEO – IS IT A PUBLIC RECORD?

*Question:* We have security cameras recording activities at several municipally owned facilities including the town office, the elementary school, and the public water supply. Is this surveillance video a public record?

*Answer:* Arguably not. The definition of “public records” under Maine’s Freedom of Access Act (FOAA or “Right to Know” law) features a variety of exceptions, including one for records describing security plans and procedures to prevent acts of terrorism (see 1 M.R.S.A. § 402(3)(L)). We think security camera footage could qualify for this exception because it could reveal, among other things, where cameras are located, whether they are functioning normally and 24/7, what their coverage and resolution is, and whether and when/where there are security patrols as well. Video is thus a record that may, by simple deduction, describe security plans or procedures.

As noted above, however, this public records exception applies only to security plans or procedures prepared specifically to prevent acts of “terrorism,” which the law defines as conduct designed to cause serious bodily injury, substantial damage to multiple structures, or substantial physical damage sufficient to disrupt critical infrastructure. In our view most security plans and procedures involving public facilities, such as places of public business and assembly, or public infrastructure, such as transportation and utility systems, probably qualify under this definition.

For more on public records exceptions and handling FOAA records requests, see our newly updated “Information Packet” on the Right to Know law, available free to members at [www.memun.org](http://www.memun.org). (By R.P.F.)

## MUNICIPALITIES & THE TRANSFER TAX

*Question:* What is the real estate transfer tax, and are municipalities exempt from paying it? Also, how does it apply to the sale of tax-acquired property?

*Answer:* The transfer tax is a State tax imposed on each deed by which any real property in Maine is transferred. The tax rate is currently \$2.20 for each \$500 or fractional part of \$500 of the value of the property. The tax is imposed ½ on the grantor and ½ on the grantee. It is collected by the registrar when the deed is submitted for recording in the registry of deeds. The amount of the tax is computed on the value of the property as stated in the declaration of value, which must be signed by both parties and submitted with the deed at the time of recording.

Deeds to or from the United States, the State of Maine or any of their instrumentalities, agencies or political subdivisions (including municipalities) are exempt from the tax *but only for the government’s half*. The other party is still liable for its half, except for transfers to the Maine Department of Transportation or the Maine Turnpike Authority for transportation purposes, gifts to governmental entities, and transfers to governmental entities from a bona fide nonprofit land conservation organization.

As applied to the sale of tax-acquired property, the transfer tax is computed on the basis of the sale price. The buyer, whether the former owner or another party, is liable to pay its half of the tax, but the municipality is exempt from paying its half. The buyer is also responsible for submitting the declaration of value and recording the deed. The municipality, however, should prob-

ably complete the declaration of value form not only because the seller must also sign it but to ensure its accuracy as well. Both the declaration and the deed should then be delivered to the buyer for payment of the tax and recording of the deed at the buyer’s expense.

For full details on Maine’s transfer tax, see 36 M.R.S.A. §§ 4641-4644. (By R.P.F.)

## HARASSMENT PROTECTION

We’ve had a number of inquiries lately from local officials and staff complaining about harassment by irate individuals. (This isn’t surprising given the anti-government sentiment that now prevails in some constituencies, although there have always been malcontents.) In several cases we’ve suggested filing for a protection from harassment order under Maine’s “Protection from Harassment” law (5 M.R.S.A. §§ 4651-4660-A).

This law enables victims of harassment (both individuals and legal entities) to obtain a protection order from the Maine District Court. The order may be valid for up to one year and, in addition to prohibiting further harassment, may order the defendant to pay all legal expenses. Any violation of the order is a Class D crime punishable by jail time and up to a \$2,000 fine.

Before filing for a protection order, however, it is critical to understand how harassment is defined under the law. “Harassment” means three or more acts of intimidation, confrontation, physical



# Municipal Calendar

**ON OR BEFORE DECEMBER 15** — Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, 11 State House Station, Augusta, ME 04333-0011 [22 MRSA §4311].

**DECEMBER 25** — Christmas Day - a legal holiday (4 MRSA §1051, 20-A MRSA §4802).

**DURING DECEMBER** — Towns that elect officials by secret ballot under

30-A MRSA § 2528 must make nomination papers available 40 days before the filing deadline. The filing deadline must be at least 45 days before the election date. For most towns with March elections, papers must be made available beginning sometime in December, depending on the date of the election.

**BY JANUARY 1** — Each owner or keeper of a dog or wolf hybrid at the age of 6 months or more shall obtain a license for that animal from the municipal clerk (7 MRSA § 3922).



## Legal Notes

force or threats of physical force made with the intention to cause fear, intimidation, or damage to personal property and that in fact does so. "Harassment" also includes one act of any of several criminal acts, such as assault, terrorizing, restraint, stalking, and violation of privacy.

Also before filing, the victim must report the harassment to a law enforcement officer, and the perpetrator must have been notified in writing by law enforcement to cease and desist.

Would-be filers should also note that the court can order them to pay the defendant's legal fees if the complaint is frivolous.

For step-by-step instructions on obtaining a protection from harassment order, see this guide: [http://www.courts.state.me.us/reports\\_pubs/pubs/hanbooks\\_guides/pa\\_ph/pa-ph-2012.pdf](http://www.courts.state.me.us/reports_pubs/pubs/hanbooks_guides/pa_ph/pa-ph-2012.pdf). (By R.P.F.)

### NO COMPREHENSIVE PLAN?

*Question:* We have no comprehensive land use plan. What types of land use ordinances are we prohibited from enacting, and what types are we permitted to enact?

*Answer:* Without a comprehensive plan adopted by the municipal legislative body (town meeting or town or city council), a municipality cannot enact a general or comprehensive zoning ordinance (see 30-A M.R.S.A. § 4352(2)). A "zoning ordinance" divides a municipality into zones or districts and prescribes different regulations in each district (see 30-A M.R.S.A. § 4301(15-A)).

An adopted comp plan is also required for a rate of growth ordinance and an impact fee ordinance (see 30-A M.R.S.A. § 4314(3)). A "rate of growth ordinance" limits the number of building permits issuable over a specified time period (see 30-A M.R.S.A. § 4301(13-A)). An "impact fee ordinance" establishes a mechanism by which impact fees can be imposed on new development to fund the cost of public infrastructure necessitated by the development (see 30-A M.R.S.A. § 4301(6-B)).

An adopted comprehensive plan is *not* required, however, for either a shoreland zoning ordinance or a flood-

plain ordinance (see 30-A M.R.S.A. § 4314(2)).

Nor is a comp plan required for an adult entertainment establishment ordinance, a cluster ordinance (allowing flexible subdivision design) or a design ordinance prescribing color, shape, height, landscaping, amount of open space or other physical characteristics of development (see 30-A M.R.S.A. § 4352(2)).

A comp plan is also unnecessary for other land use ordinances, such as subdivision, site plan, minimum lot size, and moratorium ordinances.

Where an adopted comp plan *is* required (for general zoning, rate of growth, and impact fee ordinances), the ordinance must be consistent with the plan (see 30-A M.R.S.A. § 4352(2)). This longstanding requirement for consistency has been construed by the Maine Supreme Court as requiring only

"basic harmony," a relatively undemanding test (see "Comprehensive Plans & Ordinance Consistency," *Maine Townsman*, "Legal Notes," June 2000).

Also worth noting is that a comp plan, by itself, does not regulate land use activities. It is a plan, with goals and objectives and a strategy for achieving them, but only ordinances enacted pursuant to and consistent with the plan have (in the words of the Law Court) "regulatory teeth" (see "Comprehensive Plan Not 'Regulatory' Document," *Maine Townsman*, "Legal Notes," October 2009).

For a wealth of information on comprehensive plans and land use ordinances, including sample comp plans, model ordinances and planning guides, see the State's Municipal Planning Assistance Program homepage at <http://www.maine.gov/doc/commissioner/landuse/index.shtml>. (By R.P.F.)



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