

October 2011

maine townsman

The Magazine of the Maine Municipal Association



EXCESS ACCESS
Serial Requests, FOAA
Bill Cause Concern

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MMA website: www.memun.org

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How Much Access Is Too Much?

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An estimated 20 municipalities in Maine – and possibly more – have seen citizens pepper town officials and staffs with scores of vague Freedom of Access requests. That, and changes to the state FOA law sought in LD 1465, raise questions about excesses with public access.

Anniversary Series: Don Strout of Corinth

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Perhaps they should rename the Town of Corinth “Stroutville.” For more than 35 years, Don “Donnie” Strout has served his town in many ways, including as selectman, planning board member, town manager and state representative. Read more as MMA’s 75th Anniversary series continues.

Managing Their Moves

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Working as a municipal manager is a difficult thing to do, especially during times of tough budgets and government skepticism. The Maine Townsman gets the perspectives of several managers who left their previous towns and cities and landed squarely on their feet, right here in Maine.

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MMA’s Risk Management Services Department this year distributed \$599,120 to members in dividends from its Workers Compensation Fund and \$499,593 from its Property & Casualty Pool. Also, learn more about personal protective equipment and how to file Workers Compensation First Reports online.

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Some people perceive efforts at historic preservation as unnecessary and burdensome. But Portland, Bangor, Rockland, Bath and other municipalities found that a strategic approach to preserving prominent buildings and districts creates economic life and activity.

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Capital Improvements Planning (CIP) is an important tool for municipalities that need to think ahead about road projects, renovations, construction and other major efforts. This article by Maryland expert Jean Holloway walks town officials through some misconceptions about, and benefits from, CIP.

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COVER: This photo was taken recently inside the Statehouse, where a bill to expand the state Freedom of Access Act – LD 1465 – is causing much municipal consternation. Freelance photographer Jeff Poulard took the photo.



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The Difference is Trust

Serial FOAA Requests Swamp Officials, Staffs

By Eric Conrad, Director of Communication
& Educational Services, MMA

Nathan Poore went through it in Falmouth, as did Jay Feyler in Union. Dana Lee, the former Town Manager in Poland, dealt with it too. He found the experience so disturbing it was part of the reason why he resigned last spring.

In at least 20 communities across the state, citizens suspicious about municipal government have swamped town and city officials with Freedom of Access Act demands – commonly known as “Right to Know” requests – that officials say disrupt operations and demoralize staff.

In many cases, the people behind the requests don’t know specifically what they are seeking, so they query all kinds of records – typically emails, but also financial data, databases, minutes and other items.

But it’s not the vagueness of the requests that municipal officials find tiresome. It’s the volume.

Feyler, Town Manager in Union, said a small group of citizens in his town filed 75 FOAA requests over a 12-month period. Poore, Town Manager in Falmouth, said one citizen filed “close to 100” FOAA requests last year.

Some of the managers who feel besieged today were fine with FOAA requests prior to the recent deluges. The managers expected municipal employees to respond quickly and courteously.

Today, they feel differently and, in many cases, they have developed formal processes for receiving requests, responding to them and documenting which records were released and on what date.

“Before this, my customary application was in the customer-service arena,” said Poore. “Someone comes in, they want a copy of a document,

you give it to them.”

SUSPICION IN UNION

Feyler said Union’s experience with repeat FOAA requests started in the summer of 2010, when the town proposed a \$1 million road bond. That brought out a small handful of skeptics who started requesting all kinds of documents, from which roads the town had paved, where they were located and why they were chosen.

“It was like, ‘I want to catch you on something,’ ” Feyler said. “ ‘Everyone’s crooked and I’m going to prove it.’ ”

From there, the subjects changed and the number of requests mushroomed. During a slow week, one or two FOAA requests would come in. During the busiest week in July 2010, Union recorded eight or nine.

Once town officials sized up the situation, they started designating who would respond to each request. Usually, the work was divvied up among the deputy clerk, code enforcement officer and Feyler. Often, it fell to Feyler.

“I don’t have executive secretaries so a lot of this was on me,” he said.

A surprise came when the FOAA requests sought information from the Board of Selectmen’s home computers, which they were using at times to write emails about town business.

That practice stopped after selectmen spent hours in some cases going through their home computers to find emails on the topics sought by the citizens who were behind the requests. The town purchased five laptop computers for the select board members to use at home – an expense to taxpayers that wouldn’t have occurred were it not for the repeat FOAA requests.

Union also more formally tracks FOAA requests now. Feyler said the

deputy clerk now records each FOAA request and keeps track of every response.

An interesting twist came during the last election. One of the citizens behind the FOAA requests ran for office, spending a considerable sum of money to seek a select board post that pays \$500 annually. She lost by a wide margin.

OVERWHELMED IN POLAND

Dana Lee can relate. One woman in the Town of Poland got to the point where she was filing four or five FOAA requests – in a day. Lee estimates she filed 80 requests over a six-month period. Many of them were redundant in the information she sought, but all of them had to be addressed.

“We actually got to the point where we were considering hiring a part-time public information person,” Lee said.

The citizen-requester didn’t have an obvious political or partisan point of view.

“Her particular beef in life was that some people are ‘haves’ and some are ‘have nots,’ ” Lee said. “She was trying to prove wrongdoing. We kept giving her information and she’d get angry when there was nothing. Then, she’d redouble her efforts.”

Lee, who resigned as manager in May, received some solace when fellow managers told him they also were dealing with people “who are using FOAA as a weapon.” A former president of Maine Municipal Association, he now runs Lee Facilitation Services, a firm that he hopes can help municipal and county officials deal with an array of challenges.

His colleagues told Lee the people behind the requests aren’t seeking specific information as much as they

are trying to make life miserable for people who serve in municipal government.

After some time, Poland was able to develop four official responses to the woman's FOAA requests: 1. The town does not have the record you seek; 2. We have the record and here it is; 3. Can you clarify the request?; 4. It will cost you (a certain amount of money) to do this research. Do you want us to proceed? (Under current state law, FOAA requesters can be charged \$10 an hour for staff time spent on FOAA research, after the first hour.)

"Poland is better for all of this, in some strange way," he said.

SURPRISE IN FALMOUTH

Nathan Poore said his town of

nearly 11,000 people had a reasonable experience with the state FOA law for many years. Occasional requests would come in from citizens – and, sometimes, from a news reporter – and they would be dealt with as routine matters.

In a way, the requests were helpful, as employees used them in deciding what new information to put on the town's website.

"Most of the time, it was a piece of cake to meet the request. We'd tell 99.999 percent of the people: 'It's on the town website and here's where you can find it,'" Poore said.

That changed about a year ago, when one resident in town started asking for a lot of information, much of it in the form of emails. The trouble with email FOAA requests that cite a certain topic is they are hard to sort. For start-

ers, a single email might contain information on multiple subjects. Also, one email can be sent to 10 or 20 people and it can generate many responses.

Municipal employees can spend hours sorting through email chains and responding in a way that meets the request and complies with the state FOA law. On the other hand, at \$10 an hour – while Poore and many managers feel that fee is too low – the costs to do all the work can mount. Poore said it's important for municipalities seeing repeat FOAA requests to document all the time spent on them, because the costs add up.

As was the case in Poland, Poore said this frequent requester in Falmouth did not have a partisan point of view. However, it felt as if the citizen simply did not trust town officials. "He'd say he had lawyers behind him, supporters," Poore said.

Falmouth also changed its approach to FOAA in response to this wave of requests. Councilors only use official town email addresses now. Processes are more formalized. Lead staff members are trained and emails are filed into "literally, hundreds" of subject folders to make them easier to retrieve, if a request comes in.

Poore said the citizen's interest seems to have waned in recent months. Poore asked rhetorically if it was fair to all Falmouth citizens that so much staff time and taxpayer dollars were spent on one man's crusade.

ANOTHER VIEW

Sigmund Schutz, a lawyer with Preti Flaherty in Portland who works with members of the Maine Press Association on FOAA matters, makes it clear up front that he understands the law is not intended to harass town and city employees.

"FOAA wasn't meant as a way to shut down municipal government," Schutz said. "At a certain point, you're dealing with harassment and serial harassment. I am sympathetic to that."

On the other hand, Schutz said if 20 or so towns and cities are dealing with this trend, that's a fraction of the 492 municipalities that exist in Maine. Schutz, whose legal experience on FOAA matters tends to be representing newspapers and media outlets, said towns and cities aren't perfect.

Sometimes the FOAA requester will ask for a record to be emailed

GUIDELINES FOR SERIAL FOAA REQUESTS

Some municipalities learned from the serial Freedom of Access Act requests seen in recent years. They've taken steps to assure compliance with state law and to protect elected officials and municipal employees. Here are a few of the steps they suggest:

- Wean councilors and select board members off using personal (home) email to communicate about municipal business. Otherwise, officials and employees risk having FOAA requests apply to their personal computers and emails.
- Train lead staff on FOAA, how to handle repeat requests and how to deal with requesters who are distrustful of town hall. In small towns, consider making one employee – perhaps the manager or clerk – the point person to deal with FOAA requests when they are received.
- Establish and write down the steps that should be taken in handling requests. Record the nature of each request, who the requester is (if known), what time the request was made and how and when it was met (or denied). Document and file each request and disposition.
- Be consistent. A municipality invites trouble if it handles FOAA requests from certain people one way, but responds differently if someone else – or a serial requester – seeks the information.
- Keep track of the time devoted to each request if it is a time-consuming one. Under state law, municipalities can charge \$10 per hour when municipal employees' time is spent on an FOAA request, after the first hour. The time – and money – can add up when email strands are sorted and multiple municipal officials are involved.
- Try not to take the serial requests personally. It's easy to feel hurt when someone distrusts his or her municipal government, but reacting emotionally (sad, frustrated) affects you more than the requester.
- In most cases, serial requesters tire when all the mining for data provides little or no critical information. It can take a year or more for that to happen, but the requests usually taper off.

(Sources: Officials in various towns contacted.)

by a municipality, he said, but an official will say come in and inspect the document yourself. When someone shows up to do that, the municipal employee isn't "crazy about letting the (requestor) control the original document, either."

Schutz has opinions about a controversial piece of pending legislation, LD 1465, that can be characterized as quite different from most municipal officials.

LD 1465, among other things, would expand Maine's FOA law in six ways:

- It would require that FOAA requests be handled "immediately," unless time is required to redact confidential information or if the record is in storage.

- Failing to provide the requested documents according to an established, response-time schedule would be deemed as a denial of the request and subject to a Superior Court injunction and \$500 civil penalty.

- It would require that the information be provided in the form that the requester wants it, so long as the municipality (or other governmental

entity) has the equipment and ability to do that. In other words, if the information is on a piece of paper at city hall, but the requester wants it sent to him as a PDF attachment to an email, that is what the bill would require.

- It would permit FOAA requests to be made by telephone. A requester would no longer have to draft a letter or email and send it to the city or town. A phone call would suffice and a municipal employee would have to mail or email the document to the requester.

- It would expressly prohibit a governmental employee from asking about the purpose of the request.

- It would require that each town designate a "public access officer;" the bill also spells out a series of training and other requirements for the officer to meet.

Schutz views LD 1465 as less onerous than it sounds. He called it "a codification of current law." He said most requests are dealt with as soon as they come in anyway. He said sending records to requesters via email – instead of providing for in-person inspection of paper documents – is the wave of

the future. And, responding via email may take less time than dealing with someone in person.

Many state agencies, towns and cities think they have five working days to deal with FOAA requests, Schutz said, but that's a misnomer.

"Public records laws right now essentially require an immediate response – if (the records) can be provided immediately, they should," he said. "The five working days has only to do with denials."

MUNICIPAL CONCERN

Many municipal officials are troubled by the possibility that LD 1465 could be enacted during the 2012 session.

The immediate-response requirement is at the top of their list of concerns. The bill was carried over from the 2011 session so that the Legislature's Right to Know Advisory Committee had time to examine its impact at the state and local levels. (MMA has a representative on that committee.)

Feyler in Union questions whether the authors of the bill ever stepped foot in a small town's municipal building, where only one or two employees typically are on duty at any given time. He said it will be "scary" in his town if the bill passes, especially if a new wave of serial FOAA requests begins.

"I've told some citizens in town that if this bill does pass, and an FOAA request comes in while you're standing in line to get your vehicle registered, you're going to be waiting a while," he said.

Geoff Herman, Director of State & Federal Relations at MMA, said LD 1465 would fundamentally change the nature of FOAA requests and responses in Maine and how they historically have been handled.

Until now, the concept was that if someone wants to inspect a public document right away, the requester can come to town hall, look through a report or spreadsheet for the information that's of interest and ask for copies to be made, Herman said.

LD 1465 would put more responsibility on municipal employees and less on the requester. A request could be made by email or with a phone call and the municipality would have to do all the searching, selecting and copying – and it would have to do so right away or face a possible court injunction and



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civil penalty.

Maine's FOA law does more than protect the public nature of government records – it also prescribes what information should remain confidential, said Herman. Because the law does both those things, the task of sorting through email correspondence to provide what is public and sift out what's not can be complicated and time-consuming.

"LD 1465 does not appear to recognize that," Herman said.

Poore, in Falmouth, said he "doesn't even want to think about" the possibility that LD 1465 is enacted as printed. He said the immediate response provision is most troubling. "Immediate response?" he asked. "In municipal government, only rescue calls get that kind of treatment."

Gary Wood, Corporation Counsel in the City of Portland, said some people think FOA laws are mostly written for and used by news reporters. But reporters make requests sparingly, they usually seek a specific piece of information and they are reasonable if the city explains that it will be cumbersome and potentially costly for the city to respond.

"They are very cooperative in those situations. They work with us to refine

the request," he said.

Wood said LD 1465 is further proof of how far FOA laws have drifted from the original intent. For example, he said, lawyers for many years have used FOA laws to subvert rules regarding evidence discovery in court cases involving municipalities.

If a court rules that certain discovery requests in a civil case go too far, a lawyer can have a third party file an FOAA request for the same information. Or, a lawyer can file sev-

eral sweeping FOAA requests of a municipality as a first step, gain a lot of valuable information before a judge is involved and then sue the city.

"If they're public documents, we do have to turn them over," Wood said. "Some law firms use that to try to get us to settle with them. It's an unfortunate perversion of the law. FOA law is so far removed from its original intent, which was to make sure things weren't happening behind closed doors and in smoky corridors." **[m]**



The Maine Legislature carried over LD 1465 during the 2011 session. It will be reconsidered in 2012.

MMA Executive Committee Takes Position on Question 1

Every year during its fall meeting, Maine Municipal Association's Executive Committee identifies the Association's position on any initiated or referendum ballot measure scheduled for the November election and identified as having both a direct and statewide impact on local government. Although there will be four ballot measures presented to the voters on Nov. 8, the Executive Committee focused this year on Question No. 1, which is the people's veto initiative that would repeal most of the law enacted by the Legislature last spring which put an end to the practice of same-day voter registration.

Question No. 1 will read: "Do you want to reject the section of Chapter 399 of the Public Laws of 2011 that requires new voters to register to vote at least two business days prior to an election?"

As municipal officials are well aware, current law has long allowed people to register to vote up to and including the day of an election. A bill enacted by the Legislature this spring, and signed by the Governor establishes a pre-election day deadline for a person to register to vote. That deadline is at least two full business days before the election. Failure to register by the deadline will prevent that person's vote from being counted in that election.

This people's veto would strike out all provisions in that legislation establishing the pre-election day voting registration deadline. It would leave intact the element of the new law that modestly tightens up the absentee voting process by requiring a person asking for an absentee ballot after the third business day before election day to state one of three particular reasons why voting by absentee ballot is necessary (unexpected absence, physical disability, inability to travel).

After hearing a presentation from both the proponents and opponents of the people's veto, and after its own deliberations, the Executive Committee voted to support the people's veto. The Executive Committee's decision was entirely in line with the position MMA's 70-member Legislative Policy Committee took on the original legislation last Spring, as summarized below, and is in similar accord with the position taken by the Maine Town and City Clerks' Association.

While municipal officials recognize that wardens and clerks are burdened by election day responsibilities, and appreciate a legislative interest in reducing that burden, they believe the elimination of same day voter registration will frustrate and be generally unhelpful for some voters and otherwise fails to get at the heart of the problem. Instead, municipal officials believe that an overhaul of the absentee balloting process would be a more effective and voter-friendly way to efficiently manage elections. Based on the feedback received by many municipal clerks, it is the absentee balloting process (requiring ballots to be handled multiple times before being finally cast) that places unnecessary additional burdens on election clerks

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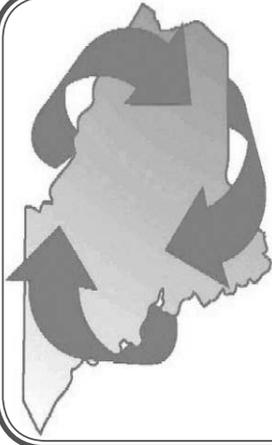
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8:30 - 9:30 Breakout Sessions	Statewide E-Waste Program Updates DEP will explain the new developments in the e-waste program. An explanation of the Veolia program and what DEP looks for at facilities will also be covered.	Safety Certification Training by DOL SafetyWorks! Lock-Out, Tag-Out
9:40 - 10:10 Plenary Session	What Do YOU Want, Need, or Expect from MRRA? A facilitated open discussion. What do YOU, the members, see as the future role(s) for MRRA in the solid waste industry in Maine. The Board of Directors and staff need your ideas! How can MRRA best serve your needs?	
10:20 – 11:20 Breakout Sessions	Hazardous & Hard-to-Handle Waste Options Alternative ways to dispose of many items considered hazardous wastes that can help reduce expenses. Ross Nason of KVCOG will offer examples of how towns in his region handle latex paint, propane, Freon, motor oil, anti-freeze, old gasoline, pesticides, etc. to lower costs.	Safety Certification Training by DOL SafetyWorks! Industrial Ergonomics & Proper Lifting Techniques
11:30 – 12:00	MRRA Annual Business Meeting	
12:00 – 12:40	Luncheon Buffet	
12:45 – 1:10 General Session	News From Augusta The Governor and legislature have been active in redefining the roles of some state agencies and departments. Representatives from DEP & SPO will report on the changes made or pending on their programs and how that may affect you. The future of SPO and the East Millinocket project will be discussed.	
1:15 – 2:45 General Session	Case Study: Oxford County The towns in Oxford County did a thorough analysis of their current solid waste programs and looked at a variety of options changes. Consultants were hired to assist with this study. Ferg Lea of AVCOG will present an overview of the results and provide insights into the conclusions.	

The program is tentative and subject to change.

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Don Strout: Serving Corinth – in Many Ways

By Eric Conrad, Director of Communication
& Educational Services, MMA

Sometimes, the career that you envision just doesn't work out. And sometimes, the career that you actually experience is so much richer.

Don "Donnie" Strout is a case in point. Strout has served the Town of Corinth and State of Maine in so many ways it's hard to list them all: selectman, town manager, state legislator, Transportation Committee chair, planning board member, firefighter, ambulance driver, church deacon and many more.

But that wasn't the plan. "When I graduated from high school," Strout said, during a recent interview in the kitchen of his Main Street home, "I wanted to be a teacher and a coach." He turned to Lorayne, his wife of 37 years: "I bet you didn't know that, did you? I'm not sure I ever said that before."

Instead, after graduating from Higgins Classical Institute in his hometown

of Charleston, Strout took a job as footwear salesman, first with W.S. Emerson and then with the Hurd Shoe Co. out of Utica, N.Y. In both cases, his sales territory was expansive – covering much of New England, but the work was steady and he stayed in footwear from 1960 to 1979.

During that time, he also coached youth sports teams in the Corinth area. Coaching raised his profile in town because he met so many parents along the way. That, in turn, allowed him to win his first election to the Corinth Select Board, in 1971. He served a series of six, one-year terms as selectman and sprinkled in two terms on the town Planning Board.

GAS PRICES SPUR CHANGE

In 1979, a change in the economy caused Strout to consider a career change. "Gas prices went from 59 cents to 86 cents a gallon," Strout recalled. "I decided it was time to get off the road."

The Town Manager's position in Corinth had opened. Strout possessed excellent municipal and legislative experience (more on that later), so the select board's decision on whom to hire was an easy one. If fact, the select board approached him. Thirty-two years later, Strout calls his tenure as Town Manager the most satisfying period of his career.

Ask Strout to recite his biggest achievements as a manager, and he starts with the town budget. When he took over the job, "Corinth was in pretty good shape," he said.

The mil rate in town was \$14.10, but Strout vowed to his select board that he could get it below 13 mils. He did that, and then some – getting the rate below 10 mils in just a few years and even as low as 8.90 at one point. In

2010, Corinth's rate was still relatively low, at \$11.80 mils.

Strout said his approach to municipal budgeting is the reverse of what many municipal managers do. Rather than start with expenses and revenues, and then finding out what the mil rate will be, he would target the mil rate first and work backward, honing spending priorities and requests at the end.

Of course, for a town manager to accomplish that, the local school district has to cooperate. Fortunately for Strout, it did. He enjoyed an excellent relationship with Leonard Ney, who served as superintendent of schools from 1979-2006, nearly mirroring the years (1979-2010) Strout served as Town Manager.

"He'd call me every year after Jan. 1 and approximate what the school costs would be," Strout said of Ney. "School spending was 70 to 73 percent of the overall spending, so that made things a lot easier."

TRUST FUNDS HELP TOWN

Corinth is fortunate to have several dedicated trust funds that have helped pay for cemetery upkeep, general assistance and school scholarships over the years.

One such fund has a neat story behind it. In 1939, a gentleman from Massachusetts happened to be in Corinth when his car broke down. The local repair garage got his car running right away – and at no charge.

The man never forgot that act of kindness and, when he died, he left \$600,000 to the town to serve the "deserved poor."

Another large fund established by the Morison family was worth \$2.2 million in 2010, according to the town's



Don Strout

Annual Report. That fund is used to pay capital and road improvement projects. The Smith family also created several funds to pay for scholarships.

Strout also had an unusual philosophy about townfolk who sought general assistance money.

“Welfare never really bothered me,” Strout said, speaking of his beliefs as Town Manager and state lawmaker. “If you need help, you need help.”

But seeing that Corinth is a relatively small town, at approximately 2,800 residents, Strout also knew which people requesting assistance were able-bodied and which were not. If someone who was in good health sought general assistance, and Strout knew there was a job opening somewhere in town, he’d steer the person toward working whenever possible.

Sometimes, he said, people who receive general assistance are unfairly stigmatized as lazy or irresponsible. That’s not always the case.

“I remember one guy who received welfare. He got a job later and paid it all back,” Strout said.

PASSION FOR ROADS

If there is a single passion that stirs Strout the most, it’s his dedication to improving roads in Corinth and surrounding communities. Strout worked on roads in two capacities: as town manager and elected state representative, including one term as Chair of the Legislative Transportation Committee.

Strout first ran for the state House of Representatives in 1973, while he was simultaneously serving as a town selectman. The Penobscot County Republican Chairman asked Strout to run for the Legislature during a special election that occurred after the previous House member – also a Republican – died.

Then-Gov. Kenneth Curtis, a Democrat, sought to expand his party’s majority in the House of Representatives, so the governor came to Corinth to

campaign against Strout, who ultimately won by a 41-vote margin. “We had a real close race,” Strout said.

Talk about being busy, Strout was now a selectman, lawmaker and traveling shoe salesman. One point of pride is that he only spent one overnight in Augusta during his 23 years as a House member. He and Lorayne raised six children and Strout felt it important to be home at night, especially once his years as a traveling footwear salesman were over.

“Roads were a priority for me because, especially as a legislator, I was always looking at costs that affected the towns,” he said.

There are two road-related achievements Strout talks about with pride. First, he notes that Corinth had 36 miles of town gravel roads when he became manager in 1979. When he retired last year, the number was down to five miles.

As a town manager, Strout knew how expensive it was to maintain Route 11-43, a key stretch of road that connects Corinth to Exeter, Corinna and ultimately to Interstate 95 in Newport. For years, the town maintained Route 11-43 in the winter and the state maintained it during the summer.

“During the time I was town manager and in the Legislature, I commuted every day across Route 11-43 to Augusta,” he said. “I said that while I was in the Legislature, that Route 11-43 from Corinth to Corinna would be taken over by the state. And, while Gov. (John) McKernan was governor, I was able to get that done. It was approximately 15 miles and that was a savings not just to Corinth, but to two of my other towns.”

Strout acknowledges that serving dual positions as town manager and state legislator is frowned on by some. But, he said, the Corinth select board respected both roles.

“The Board of Selectmen was very supportive of me doing both,” he said. “There was a benefit, I guess, to doing both – a benefit to them and to the town.”

Strout also is a fierce supporter of home rule. He was a visible part – featured in a statewide television commercial – of the effort in 2009 to oppose a tax-cap measure known as “TABOR II,” which voters soundly rejected.

“Decisions like that should be made at the local level,” said Strout. “When you turn them over to the state, they mess things up.” 



SPECIAL PROJECT, SPECIAL YEAR

Maine Municipal Association turns 75 this year and to celebrate we are producing a series of oral histories at our website (www.memun.org) and profile articles such as this month’s piece on Corinth Town Manger Don Strout. **Hear Don in his own words.** Go to the MMA website, click on the 75th Anniversary logo in the upper left corner and follow the directions from there.

Earlier, this year, MMA asked members to nominate people who served their communities in various municipal roles over a long period of time. The response was overwhelming! Dozens of suggestions came in and everyone who was nominated will be recognized at the MMA Annual Convention, Oct. 5-6.

Nine subjects have been chosen for the in-depth oral history and profile project that began in the April edition of the *Maine Townsman* and runs through December. We hope you enjoy the project.

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Managers Move For Different Reasons

By Douglas Rooks

Town and city managers move around, a common phenomenon in many states. But setting Maine apart is their uncommon ability to find posts elsewhere in the state, sometimes close by, even when their departures are attended by controversy.

It's fairly common for them to pursue entire careers in municipal management within Maine's borders, with half a dozen different postings, or even more.

Manager shifts garnered statewide headlines two years ago, when, in close succession, the cities of Bangor, Lewiston and Presque Isle all parted company with long-time managers, two of whom were re-hired in two other cities.

But interviews with six veteran managers show there are almost as many reasons to change jobs as there are manager positions. The big influences for job changes include personal and family issues as well as professional ones, such as moving to



Jim Bennett

larger communities with more responsibility and higher pay. Climbing the career ladder is, perhaps surprisingly, not always a big factor. "When a community hires a manager, it's also bringing in a family," said Jim Bennett, who left Lewiston in 2009 after seven years as city administrator, arriving in Presque Isle the following year after an interim stint with Sabattus. "Before they even

considered offering me the job (in Presque Isle) they asked my family to visit."

Bennett and his wife have two high school-aged children, who were heavily involved in student government and athletics in Lewiston. "It turned out it was the right move for the family," he said. "Presque Isle did everything they could."

"My children and my wife were very much involved in the decision," he said, and, for himself, Bennett was glad that he could stay in Maine.

MOVING ON MADE SENSE

Cornell Knight has been a manager in five Maine communities



Cornell Knight

and his moves have made few waves. "I've never left with a resign-or-be-fired message," he said. Rather, each move "seemed to make sense" for reasons that changed over time.

Like many managers, Knight started young – he was 22 when he was hired as town manager in Baileyville. He subsequently worked for Hallowell for eight years, Jay for seven, Winthrop for 12 and earlier this year took over in Topsham. In between Hallowell and Jay, he tried his hand in private business.

"It turned out that I was a lot better as a manager than a stockbroker," Knight said, summing up the experience.

Topsham, now the largest municipality in Sagadahoc County, is also the largest he's managed, but that's as

much coincidence as plan. Topsham's booming commercial growth "was an attraction in terms of a new challenge," although it has since cooled with the recession. Knight also liked that Topsham had a complete overhaul of municipal facilities – town office, public works garage, public safety, library.

Knight found the return to a town with a town meeting-selectman form of government not much of an adjustment; he managed towns with town meetings and others, such as Winthrop, with town or city councils. Some managers find it easier to work with councils, Knight said, because town meeting communities "can take a little longer to act."

Topsham recently had to call a special meeting to accept a Community Development Block Grant, for instance. "On the other hand, the fire chief proposed buying an \$800,000 ladder truck and they approved that in 15 minutes," he said. He doubts a council could have made that decision in the current economic climate.

FIXTURE HAS NEW HOME

Ed Barrett now seems like a fixture of Maine municipal management, particularly after nearly 20 years as Bangor's city manager. But he's a native of Cleveland who started his municipal career in Texas. He also worked in the



Ed Barrett

assessor's office in Tucson, Ariz., before coming to Maine.

His background has been a plus in his latest management position in Lewiston, where he

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

succeeded Bennett as administrator. The influx of immigrants from Somalia and other countries has changed the face of Lewiston.

Ethnic diversity was characteristic of both Southwest cities where he worked, and, in Lewiston, the Somali community “has begun to settle in” and be seen as an asset, Barrett said.

“There have been some rough spots but there’s been a great deal of progress,” he added. Barrett credits Phil Nadeau, the deputy administrator, with ensuring that city services are “very closely integrated” with the needs of immigrants.

Lewiston has also undertaken a quieter, but equally important transformation of its economy, shifting from a mill town to “a logistical and regional transportation hub,” in Barrett’s words, with such anchors as the Wal-Mart distribution center and multi-modal freight transportation. That shift has in turn allowed revitalization of the downtown, with new family-owned businesses on Lisbon Street and renewed effort to redevelop the old mills.

Asked if he misses Bangor, Barrett said, “I do, but I missed the people from all my jobs.” Since he made the move to municipal work, “I’ve really enjoyed my work in the public sec-

tor 95 percent of the time,” adding, “it’s the five percent that get to you, sometimes.”

Maine, he said, is where he’d like to stay. His family heads to Baxter State Park for nearly annual visits.

NEW APPROACH IN ORONO

Sophia Wilson is one of an increasing number of women entering municipal management, and she set her sights on it early, completing the master’s program in Public Administration at the University of Maine after an internship at Bangor city hall whet-



Sophia Wilson

ted her first foray.

Two years later, Brownville offered her its manager position, and she accepted. It was a perfect way to learn

ted her appetite. Yet her first job was working for a domestic violence prevention group in Dover-Foxcroft. “I sent out a lot of resumes, but I didn’t get any offers,” she said

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the hands-on nature of municipal work, she said. Brownville now has only 1,200 people, but it was once a railroad hub and still has the infrastructure of a larger town. "It's a very rural place, and now largely a bedroom community, but there's lots to do," she said.

After taking the job in 2000, she served in the roles of road commissioner, treasurer, tax collector and water and sewer plant superintendent. On any given day, she might be doing work that in a larger community would require a separately trained professional.

What she particularly liked about Brownville was how closely her staff worked together. Covering for each other was second nature. Now, Wilson has moved to Orono, a larger town (pop. 9,630) where her management skills are in demand.

"It's really the difference between doing the work yourself and making sure that others can do their jobs," she said, an observation echoed by several managers who've moved from small communities to larger ones.

"You have to focus more on the big picture and know when to step

back," said Wilson, who will become president of Maine Municipal Association in January 2012. There were nine town employees when she was in Brownville; in Orono, there are 65.

Wilson said she's always been intrigued by Orono, after living for several years in the Bangor area. For now, she says she's "totally focused" on her new job, and doesn't know what might lie ahead.

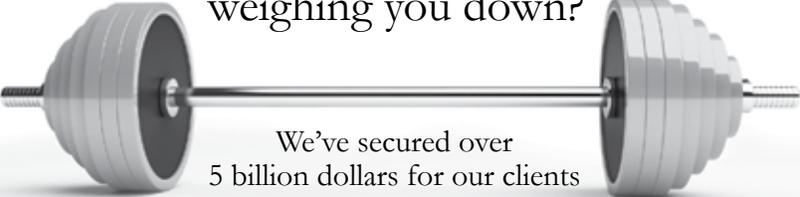
"Somehow, I doubt they'll want me to stay for 25 years, though," she added.

REDEVELOPMENT CHALLENGE

John Bubier, now city manager in Biddeford, after serving in Bath and Lisbon, also got his start in municipal management in a small town, but not right away.

He was a community organizer for the West End Neighborhood Association in Portland, and then was offered an opportunity as assistant to John Menario, the Portland city manager who later launched an independent campaign for governor. That's where Bubier got an introduction to the

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John Bubier

municipal side of economic development – lessons that came in handy later.

By the mid-1970s, Bubier felt burned out, and spent three years with the parent company

of a cruise line that served Portland. In 1977, he got a call about a vacant manager position in Boothbay and it turned out to be a fit.

“It was a great place to start as a manager,” he recalls. “You did everything – roads, welfare director, recreation, finance.” He also discovered that he “liked a challenge,” and in 1979 he moved to Lisbon, which had just recorded a budget deficit approaching \$1 million.

After getting the finances back in order, Bubier went to work redeveloping old mill buildings, with both setbacks and successes. Having tangible projects to sink his teeth into became one of his motivations – as well as a selling point on his resume.

After eight years directing the Greater Portland Council of Governments, Bubier became Bath’s manager in 1997. He quickly realized that a city defined largely by the Bath Iron Works complex also had a great downtown, hidden away.

“People would tell us, ‘I’ve been driving by for 20 years, but I never stopped,’ ” Bubier said. He knew that had to change.

A vigorous downtown association was complemented by the city’s use of grants and local funding to improve streets, sidewalks, lighting and parks.

One of the biggest changes followed Bubier’s persistent efforts to



Mark Green

attract a developer downtown, which resulted in one of the first new hotels in a city of Bath’s size in decades. It’s now a downtown anchor and it “really complements the other

restaurants and businesses” downtown has, Bubier said.

In 2005, Biddeford was looking for a new city manager, and discussion centered on the city’s two million square feet of vacant mill space. “It

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was a hell of a challenge,” Bubier said. “It’s pretty hard to turn that down.”

Biddeford now has occupied, or commitments for, 800,000 square feet, including 200 housing units and 72 new businesses. “We’re starting to catch up” to neighboring Saco, which began redevelopment efforts back in the 1980s, he said.

Bubier also credits his predecessor, Bruce Benway, hired as Biddeford’s first city manager in 1997. Benway laid the financial footing that allowed Biddeford to focus on commercial and downtown growth a decade later, Bubier said.

THE SPICE OF WORK

Like other managers, Mark Green, now in Sanford, says he thrives on the variety of his days. On the afternoon he was interviewed, Green had met earlier with the director of the Maine Turnpike Authority about a corridor study, helped an employee with a personal problem, looked into plans for a possible methadone clinic and inspected a new construction project.

“All my municipal jobs have been fun, because you never do the same

thing twice,” he said, “although, hopefully, I’d make smarter decisions the next time.”

Green also started young, at age 22, as manager of Buckfield in 1981, moving to Windham in 1983, Portland as an assistant city manager in 1989, York in 1992 and Sanford in 2004. He is currently serving a year as MMA president.

Family considerations often play a role in whether to move or not, he said. “There are times when you just don’t want to move the kids.”

Some job changes came because

“you sense it’s time to move on,” Green said. “I have a style that tends to get me into trouble at times.” On one occasion, in Portland, his job was being downsized and he started looking immediately.

But he also recognizes the lure of new challenges. “I’ve never minded change, either for myself or the community,” he said.

In Presque Isle, Jim Bennett is learning about a community at the opposite end of the state from the bulk of its population. He began his municipal career as a selectman in Lisbon,

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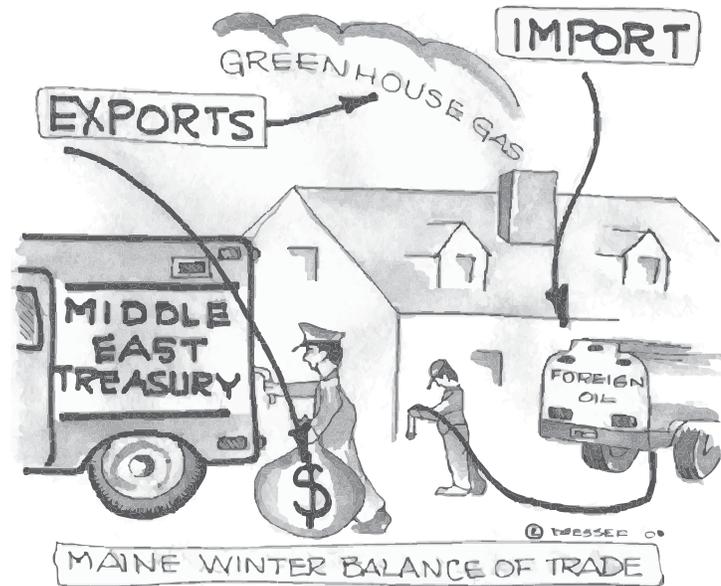
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his hometown, and, before Lewiston, served as manager in Dixfield, New Gloucester, Old Orchard Beach and Westbrook.

In northern Aroostook County, Bennett finds “an innocence, an absence of the cynicism you find so many other places.” The culture of the place “is really unspoiled,” and that’s been refreshing for him. On the other hand, “there’s a resistance to change that is very strong,” and makes for slow going at times.

NOT LIKE A BUSINESS

Bennett says citizens may not always appreciate why municipal government operates differently than a private business. A talk at a recent manager’s conference summed it up for him.

“It’s much harder than people realize to get things done,” he said. “As a private employer, you have most of the control in your hands. In the public sector, you have to share power and get many people to buy in before anything happens.”

This, he said, is why municipal management “is not a good fit” for

many who have worked only in the private sector.

Still, the managers say they look forward to the workday with enthusiasm, even those who’ve been doing it for 30 years or more.

“It’s the daily dealings with the citi-

zens that really make the difference for me,” Mark Green said. “What I like about the job is that you can actually help people, get a tree cut down or a sidewalk fixed – not every time, but often enough. How many jobs can you say that about?” **ME**

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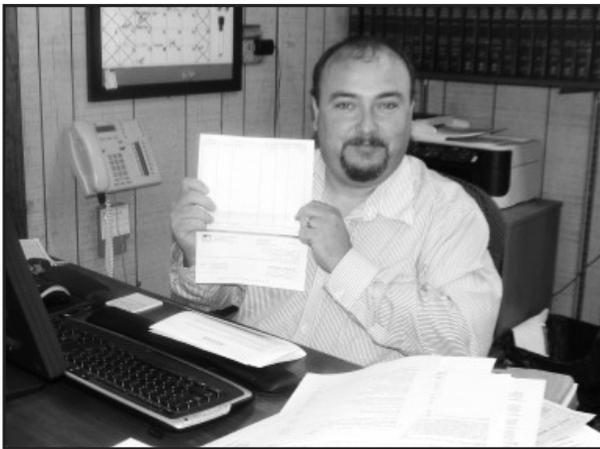
Over \$16 MILLION Awarded to Our Membership

MMA RMS would like to recognize all those members who received dividend checks in 2011! We are pleased to announce that:

The Workers Compensation Fund distributed **\$599,120** in Dividends to its Members in 2011.

The Property & Casualty Pool distributed **\$499,593** in Dividends to its Members in 2011.

Property & Casualty Pool and Workers Compensation Fund have awarded dividends to their respective members. Through the efforts of our membership, sound management, responsible underwriting and the favorable loss histories of the Property & Casualty Pool and Workers Compensation Fund, RMS has awarded \$1.1 million to its membership in 2011.



Town of Glenburn Michael Crooker, Town Manager



Richard Goodwin, Selectman and Barbara Crider, Administrative Assistant Town of Charleston

The programs are overseen by governing boards of elected and appointed municipal officials. Each year the boards review the programs' loss experience to determine if dividends may be paid. Patricia Kablitz, Director of Risk Management Services for MMA, said more than 75 percent of program participants receive dividends each year for their good risk management practices and loss experience. Since 1997, the RMS programs have returned close to \$16 million in dividends to participating members.

Workers Compensation Fund Renewal Applications Are On the Way

It is renewal time again! The renewal applications for the Workers Compensation Fund are due by mid October 2011, and we want our Membership to know that help is available. If you would like assistance with the completion of your application or just have questions, please contact Marcus Ballou (mballou@memun.org) or Judy Doore (jdoore@memun.org) at 1-(800) 590-5583, so that we may provide assistance and ensure that your entity receives the proper level of service and protection.

We truly appreciate your cooperation as it is critical to having a successful renewal. The continuing success of the Workers Compensation Fund cannot occur without the participation of the Membership.

Risk Management Services Helps Celebrate the 45th Anniversary of the Maine Wastewater Control Association



On September 14th through the 16th, 2011, Risk Management Services (RMS) staffed a booth at the MWWCA 45th Annual Convention. RMS participates in this event, providing informational resources on safety, training and self-insurance.

The RMS booth focused on educating the attendees about all the safety tools, training, grants, scholarships

and services that are available to RMS program participants free of charge. A participant quiz and a drawing were available to the many visitors at the booth. The lucky winner of a gift certificate was Stuart King a Bangor Wastewater Treatment Plant Operator.

As always, we enjoy participating in the MWWCA Annual Convention and seeing all those in attendance. 🏠

Save Time, Avoid the Fine: File your Workers Compensation First Report On-Line

MMA Risk Management Services offers on-line reporting for your Workers Compensation First Report of Injury (FROI). Reporting on line may help you to avoid the risk of penalties for late reporting. By submitting on-line, you will be taken step by step through all mandatory fields and required information.

MMA asks that all FROIs be submitted no later than 24 hours after you receive notice from the employee. The Workers Compensation Board

(WCB) requires that injuries be reported within seven (7) days of your receiving notice or having knowledge of claimed lost time due to the work injury. Once MMA receives your FROI, we will file it with the WCB immediately to meet the seven day reporting requirement. Please be aware that FROIs received by the WCB after the seventh day may result in a \$100 late reporting penalty imposed by the WCB.

It is also important to remember that a copy of the completed FROI should

be given to the employee.

If you are not already registered for online reporting, please visit the MMA website or contact Jeri Holt at MMA to register. Once registered, you will receive two emails confirming your registration and account activation. If you encounter problems or have questions about the on-line process, we can help. Please call MMA's Workers Compensation Claims Department at 207-626-5583 or 1-800-590-5583, Extension x2246 and Tracy Moody will be happy to assist you. 🏠



The Municipal Risk Manager

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

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Important Information Regarding The Completion Of Wage Statements For Workers Compensation Claims

Wage information must be filed with the Workers Compensation Board within 30 days of an employer's notice or knowledge of a claim for compensation. This is applicable to both paid and disputed claims where a claim for lost time from work has been made. A Wage Statement may also be needed if an employee is working restricted duty or reduced hours due to a work-related injury.

On 6/15/11 the Workers Compensation

Board issued a directive stating that all Wage Statement forms must be completed and that printouts from payroll systems and incomplete forms will not be accepted by the Workers Compensation Board. In addition, employers with bi-weekly, bi-monthly or monthly payrolls must break down the payroll to weekly payroll amounts. We appreciate your compliance with these Workers Compensation Board requirements. 🏠

Personal Protective Equipment (PPE) Standard For Eye and Face Protection Has Been Updated

The American National Standards Institute (ANSI) has approved and issued the new ANSI/SEA Z87.1-2010 Occupational and Educational Personal Eye and Face Protection Standard. The standard went into effect April 13, 2010 and updates the 2003 version.

Since municipal workers in almost every department can be exposed to hazards that could cause serious eye injuries, the changes in the revised standard are important. While Z87.1-2010 remains a performance-based standard and is largely unchanged, it now focuses on the hazard rather than on the protector type. This is to encourage safety personnel and users to evaluate and identify specific hazards in their workplace, such as impact, optical radiation, splash, dust and fine dust particles. Under the new standard, selection and use of eye and face hazard protective devices should be based on the hazard.

The standard will require new prod-

uct testing methods and significant changes to the product markings by the manufacturers. The major changes are in impact classifications and in eye and face coverage. Protectors were previously classified as either "basic impact" or "high impact". Under Z87.1-2010, it is now either impact rated or it is not. Protectors satisfying the requirements will carry the **Z87+** mark on both the lens and the frame or housing. Other markings, such as those devices meeting the requirements for chemical splash, dust and fine dust, will be marked D3, D4, or D5 respectively. Products may meet more than one requirement and will be marked accordingly.

This new edition, ANSI/SEA Z87.1-2010 replaces the Z87.1-2003 standard. However, the Occupational Safety and Health Administration (OSHA) has not incorporated the 2010 standard into the eye and face regulation (29CFR 1910.133) and it has not been adopted by the Maine Bureau of Labor Standards. You do

not have to replace your eye and face protective equipment right away. As long as the products you are using meet the ANSI Z87.1-1989, ANSI Z87.1-2003 or ANSI/SEA Z87.1-2010 standard, you are compliant.

The new standard is a voluntary standard and there is no requirement that manufacturers or end users comply unless OSHA mandates it. However, most protective equipment manufacturers choose to comply with the most recent revisions to the Z87.1 standard. As equipment that meets the new standard becomes available and as eye and face protective equipment needs to be purchased or replaced, you should purchase to the "new" standard.

Before any personal protective equipment (PPE) is purchased or used, it is important that you comply with OSHA CFR 1910.132, Standard for Personal Protective Equipment. This standard sets the requirements for the selection, use and care of PPE, as well as requirements for employee training and record keeping. 1910.132(d) requires "the employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE)." When hazards are present or likely to be present, the employer is required to select the appropriate protective equipment, explain selection decisions to employees, require employees to properly use it and keep records of the process, including the written hazard assessment and employee training. Failure to conduct hazard assessments is one of the top three citations issued by MBOL to municipalities.

For additional information or loss control assistance, contact your assigned Loss Control Consultant at (800)-590-5583 or (207) 626-5583. 🏠

Welcome To New Loss Control Staff



Lance Lemieux has joined the Loss Control Department as a Loss Control Consultant. Lance has more than 20 years experience in safety and human resources. Some of you may know Lance, as most recently, he was an Occupational Safety Engineer for the Maine Department of Labor. He will provide consulting services to participating members of the Property/Casualty Pool and the Workers Compensation Fund. Lance resides in Wilton, where he is a member of Wilton Fire & Rescue. 🏠

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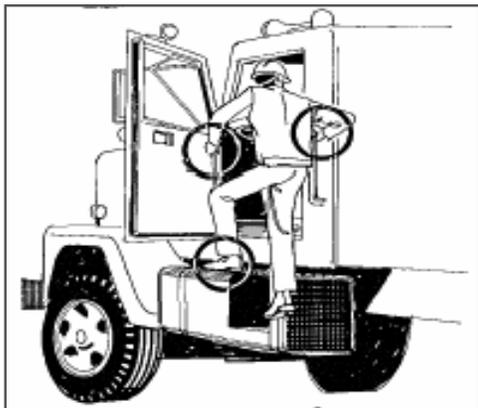
Falling while getting into or out of truck cabs or heavy equipment or when mounting or dismounting truck bodies or trailers can cause serious injuries. Many knee, ankle and back injuries result from jumping from equipment onto uneven ground or objects.

The biggest cause of falls from a vehicle is human error and failure to follow the “Three Point Rule”. The Three Point Rule requires three of four points of contact to be maintained with the vehicle at all times – two hands and one foot, or both feet and one hand. This system allows maximum stability and support, reducing the likelihood of slipping and falling.

There are important steps that can be taking to prevent mounting/dismounting injuries with use of the Three Point Rule being most important.

What the Employer can do:

- Evaluate every truck and piece of equipment. Provide additional steps, non-slip surfaces and hand holds where necessary.
- Maintain steps, contact surfaces and handholds in useable condition. Inspect frequently.
- Instruct all workers in safely mounting and dismounting equipment, including the 3-point contact method.
- Install warning decals or signs in the cab or on the door of trucks and heavy equipment reminding workers to use 3-point contact.



What the Operator can do:

- Keep steps, ladders and standing surfaces free of snow, mud and debris. Report damage immediately.
- Don't use tires or wheel hubs as a step surface.
- Don't use the doorframe or door edge as a handhold.
- Wear footwear with good support and slip resistance.
- Don't climb down with something in your hand. Leave it on the vehicle floor and retrieve it after getting safely on the ground.
- Don't rush to climb out after a long shift. Descend slowly to avoid straining a muscle.
- Be extra careful when working in inclement weather.
- Exit and enter facing the cab.
- Get a firm grip on rails or handles.
- Never Jump! You may land on an uneven surface, off balance or on something. Look before exiting.

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Historic Preservation Can Spur Revitalization

By Lee Burnett

Berwick, Maine is not the kind of quaint town where you'd expect to find an historic preservation initiative. The downtown is almost entirely occupied by a sprawling industrial complex recently vacated by Prime Tanning. None of the town's old houses are listed on the National Register of Historic Places. There's an active historical society, but until recently it has devoted its energies to cataloguing photos and papers.

But the town has high hopes of using historic preservation as the catalyst for the redevelopment of its downtown. The Board of Selectmen recently inked a 75-year lease with Bateman Partners of Portland to turn the former Berwick High School into 36 units of affordable housing using historic tax-credit financing.

The hope is that the renovated brick school building, built in 1928, and the nearby brick Town Hall, built in 1936, will provide a catalyst to tear down the Prime Tanning buildings and redevelop the eight acres into something more compatible with the downtown.

"We're really excited about this," explained Town Manager Keith Trefethen. "I think we're setting a tone with these structures for redeveloping the entire site."

Trefethen said historic preservation has been slow to catch on in Berwick, but townsfolk have witnessed the successful renovation of mills in nearby South Berwick and Somersworth, N.H.

"I think we're beginning to see the benefits of preserving old buildings," he said. "Across the river in Somersworth, they've developed some shoe

mills into condos. I look at it as progressing across the river... This is the very early stages for us."

PRESERVATION = VITALITY

Historic preservation has traditionally been the province of museums and historical society house tours. Lately, it has also been shown that historical preservation can lead to commercial revitalization, particularly of a downtown. The most famous example in Maine is the renaissance of Portland's Old Port district, but there have been similarly dramatic examples in Bangor, Bath and Rockland.

Lately, many communities are jumping on the preservation bandwagon:

Since 2007, seven communities in addition to Portland have established new historic commercial districts. They are in Camden, Lewiston, Biddeford-Saco, Sanford, Biddeford downtown and South Berwick.

In the last three years, 17 new communities in Maine have signed

on as "network" affiliates of the Main Street program, the revitalization program pioneered by National Trust for Historic Preservation. (There are already nine Maine communities with full-fledged Main Street programs.) The new affiliates are: Augusta, Bucksport, Farmington, Lisbon, Millinocket, Norway, Presque Isle, Brunswick, Damariscotta, Dover-Foxcroft, Machias, Madawaska, Bar Harbor, Eastport, Houlton, Stonington and Van Buren.

All of this activity coincides with renewed interest in a variety of tools available for historic preservation. The state's historic tax credit program has been getting a lot of media attention lately, but it's not the only tool. Also available to municipalities: tax increment financing, façade improvement programs, local historic districts, design review guidelines, preservation commissions and the Main Street program.

Historic tax credits appeal to municipalities as a way to convert white elephants into occupied, tax-paying properties. But they're more a tool

HISTORIC NUMBERS

Since Maine improved the state historic tax credit program in 2007:

- The value of renovation projects has increased from \$3.5 million per year to \$27.4 million
- Total spending has exceeded total \$135 million (representing about 2,700 jobs) at a recessionary time for the building industry.
- The tax credit will cost the state treasury \$3.5 million in 2011. That is offset by an additional \$4.5 million in sales, income and property taxes.

Source: *Planning Decision and "Economic Impact Report – The Economic and Fiscal Impact on Maine of Historic Preservation and the State Historic Preservation Tax Credit."*

Lee Burnett is a freelance writer from Sanford, leeburnett_maine@hotmail.com

of the private sector. The financing (up to 45 percent) comes from corporations or individuals who buy the credits rather than make sizable tax payments to the IRS. Municipalities are direct participants only if they own a building and partner with a developer.

Eight of the tax credit projects undertaken since 2008 have been former schools: Bessey School in Scarborough; Webster School in Auburn; Emery School in Biddeford; Berwick High School; Park Street School in Kennebunk; Lisbon Falls High School; Sweetser School in Saco; and, Gilman Street School in Waterville.

Municipalities can facilitate these projects even if they own no suitably vacant old schools by establishing an historic district, which makes all the contributing and income producing buildings within the district eligible for tax credit financing. (Individually listed buildings are also eligible for historic tax credit financing.) It takes a lot of legwork to conduct a building inventory and architectural survey. And it requires the support of at least half the property owners within the district.

In addition, there can be an undeserved stigma associated with national register listing that can give municipalities pause. Because the National Register of Historic Places is a program of the federal Department of Interior, it is assumed there are a lot of burdensome regulations involved – that the owner of a national register property must get federal permission for any alterations.

“As long as I’ve been in the field – 35 years – that’s been a common misconception. There’s a fear that this is taking away private property rights, but that’s a misconception,” said Christopher Closs, a field service advisor for Maine Preservation.

If a federal agency issues a permit or license, or contributes funding to a project within a district, then the project is reviewed for its impact on historical resources. Absent federal funding or permitting, a property owner is as free as any other property owner (within the limits of local ordinances) to install vinyl siding, remodel it beyond recognition or tear it down completely.

MUNICIPAL PRIDE

Establishing a district is usually an act of municipal pride. A lot of work can be done by trained volunteers, although hiring a consultant is advisable to write a statement of significance and to shepherd the project through state and federal approvals. The cost can run anywhere from \$5,000 to \$25,000, depending on the size of the district and the amount of volunteer contributions.

South Berwick established a large national register historic district (124 buildings) in its downtown last year. The town is the proud home of the Sarah Orne Jewett house, the Counting House and the Hamilton House, all of which are individually listed on the national register. Still, preservationists feared the creation of a district would stir a backlash because of its size and the stigma associated

with it. But the backlash never came, explained B. Daniel Boyle, chairman of the Historic District Commission.

“I sent out a letter to everyone in area based on the survey we did. I put down my home address and thought, ‘Oh, boy, here we go. People are going to accuse us of taking away their property rights.’ But,” Boyle paused for effect, “I never received a single phone call or email.”

Boyle said the national register district puts the town on the map.

“We did this for a bunch of reasons,” he said. “It gives the town the recognition it deserves. A lot of people showed interest in it. And there was the chance for economic benefit – some additional (tourist) visits. Also, part of it was the tax credits. A fair number of houses in the zone could bring in a small business.”

Educating property owners about what is possible is a big part of historic preservation. Back in the 1980s, Farmington secured a CDBG grant to collect old photographs of its historic buildings and commission a series of drawings of building facades. With these teaching tools in hand, Chris Glass went door to door and showed owners what their old building could look like if it was restored.

“It was purely voluntary. I was just jawboning,” said Glass, now a Camden architect. The town also improved its downtown streetscape and set up a revolving loan fund.

“We’ve been running off those initiatives ever since,” said J. Stevens Kaiser, code enforcement officer. “We keep going. It’s slow, incremental, but

HISTORIC PRESERVATION “STICKS AND CARROTS”					
Municipal regulatory tools					
Least Restrictive		➔		Most Restrictive	
National Register of Historic Places listing		Design Review Boards, Historic Preservation Commissions		Certified Local Governments	
No obligation on property owner unless applying for tax credits or if federal permitting or licensing is involved.		Information sharing	Review by Advisory Board	Review by Regulatory Board	The town’s historic district ordinance and its regulatory process must both meet federal and state standards.

it's a nice sort of slow methodical upgrading of buildings ... We're lucky. We have an active historical society. There's good perception and appreciation of historic buildings in town."

Back in the 1990s, the town also established a national register historic district, but the town has never adopted a design review ordinance or any regulations.

"The problem with requiring (historically accurate renovations) is you have to have the political will to adopt

an ordinance," explained Glass. "A town has to vote for it and that usually requires a disaster. If you get people angry, then the town will vote for it."

Likewise, Bath has had success with a light regulatory hand. Bath empowered the volunteer Sagadahoc Preservation Inc. to review development projects within its historic district for their compatibility with the look of the district. The Bath Planning Board usually closely follows the commission's advice, although it

is not required to, said Roxanne Eflin, director of the Maine Downtown Center.

"Bath has relied for decades on the goodness of volunteers. They have very credible, respected people on their commission and the planning board almost always follows their recommendations," she said.

PRICEY REAL ESTATE

While a non-regulatory approach affords individual property owners

HISTORIC PRESERVATION "STICKS AND CARROTS" Municipal enticement tools						
Most Generous					Least Generous	
	National Register of Historic Places listing	Preserve America Maine	Certified Local Governments	Main Street Program	Façade Improvement program	Local Option Property Tax Reimbursement*
Enticement	Up to 25 percent state tax credit for renovation projects \$50,000 to \$250,000, and up to 45 percent credit (coupled with the federal historic tax credit) for building renovation projects exceeding \$250,000	Matching federal grants up to \$250,000 for historical programming. (Program is not funded 2111.)	Many generous and flexible grants (state, federal and foundation) are only available to CLGs	Training and expertise worth \$30,000 is available to non-profit groups to pursue a downtown economic development strategy pioneered by the National Trust for Historic Preservation.	This is usually set up with CDBG funding. Loans and/or grants of \$5,000 per building are common	Up to 10 percent of cost of renovation can be recovered through tax bill Local option property tax reimbursement Section 1.30-a MRS 5730
Conditions	Must be an income-producing property in a district. Renovation work has to meet standards of Secretary of the Interior.	Communities must achieve PA designation through a series of benchmarks	Must be designated as a CLG	Must fund a full-time manager position and must follow the National Main Street strategy	Generally, must be located in a locally designated district. Sometimes, buildings must exhibit conditions of "slum and blight" to be eligible	Need to be at least NR eligible and must get prior approval of project

*Only the Town of York has a Local Option Property Tax Reimbursement

maximum flexibility and is politically the most palatable, it provides less protection to property values. The bigger the investment in an historic property, the more a developer will seek restrictions on incompatible development nearby that will erode property values, say preservationists. The 10 communities with the toughest local historic preservation regulations (so-called "certified local governments") also have among the priciest real estate.

Portland is a case in point. Rents have traditionally been higher in the Old Port District, where historic character is strictly regulated, than

along Congress Street, where historic character had been encouraged, but not regulated. (Congress Street rents are expected to climb toward Old Port levels with the establishment of the Congress Street Historic District in 2009.)

Portland and Bangor are leaders in using historic preservation for economic development – not because they are somehow different than other communities, but because they've had more experience, said Gregg Paxton, director of Maine Preservation.

"People will say, 'We're not them.' Well, it doesn't matter. They've done it because they've become aware of

what a catalyst it is. Size doesn't make any difference... Historic districts raise values of properties, they just do. Instead of impinging on businesses, they create a vibrant climate for business. Businesses are attracted to it as well as customers are attracted to it."

Berwick is hoping for a little of that vibrancy. Town manager Trefethen said the historic preservation route to economic development is an incremental one and he advises patience.

"You should be prepared for the long-term. It takes a while to get the players and the process to come together." **mt**

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Capital Planning For Small Municipalities

By Jean Holloway

Do you have a Capital Improvements Plan (CIP)? Is it really a plan or is it a list of projects you hope to do over the next several years? How often is the plan updated? Do you review your plan each year? How many years does your plan cover? Do you have a plan for financing each project in your plan or do you proceed with projects until the money runs out? Does your plan mesh with your long-range plan, comprehensive plan, land-use plan or other “vision” plans for your overall community?

These are just some of the questions you should ask in reviewing the adequacy (or inadequacy) of a capital improvement program or plan. In short, what is your system’s future (as you see it today) and how do you plan on getting to that future? Maybe you’re even asking: What is a Capital Improvements Plan?

Capital improvements planning is the multi-year scheduling of system improvements accompanied by the intended sources of funding for those improvements and the approximate timetable for accomplishing the listed projects. These improvements may take the form of system upgrades and expansions to accommodate growth or simply involve the replacement or restoration of existing apparatus to like-new condition.

A true CIP is a road map to the future of an infrastructure system of any kind: where you want to go and how you plan to get there. It is perhaps

the single biggest step in moving a system – particularly a small system – from that reactive, crisis-management mode, into a planned for, “I meant to do that” mode. Your list of projects, if that is what you have, is just that: a wish list, and not a plan for attaining those goals and improvements.

QUESTIONS, MISCONCEPTIONS

There are a number of misconceptions about the CIP process that a community may run into when attempting a first CIP. Common questions include how rigid these plans are, how much debt they will entail, if they are required and what is the need for developing one in the first place.

If I develop and adopt a CIP, won't I be locked into doing all the things it lists? The public, and sometimes even decision makers, perceive the multi-year schedule as something that locks them into the planned improvements. Because a CIP document must be flexible and reviewed each year to reassess needs and goals, the CIP is not a rigid document that commits the system to the projects it contains. If it is not reviewed and adapted as goals and needs change, it becomes simply an exercise in planning, or something one must do to comply with requirements rather than a useful guidance document for better management of the system.

If I develop and adopt a CIP won't I be burdened with debt to accomplish the projects? The CIP process incorporates an analysis of affordability and debt service capability and, thus, helps to avoid imprudent debt obligations. It can be a valuable tool in and of itself in the avoidance of over-burdensome debt. Analyzing affordability includes figuring out what your customers can

pay for as well as what your system can afford to assume.

Moreover, this common misconception about the CIP process overlooks the fact that debt is but one of the ways to pay for capital improvements and replacement. With proper advance planning and sound financial management, even a small system can do some CIP projects without incurring any debt at all.

Pay-as-you-go funding is largely dependent on adequate monetary reserves accumulated over time by recognizing equipment wear as a real cost of operation rather than a “paper” number that doesn’t need to be funded by rates. In short, recognizing depreciation and funding it annually will enable more such self-funding of smaller projects and will accumulate the local match that is usually required by programs that fund larger projects. Don’t ever be tempted to defer the accumulation of reserves for fear of not qualifying for funding because you don’t need it. One way or the other that money will not go to waste in the proper stewardship of your system.

Is there a regulation or rule that says I have to have a CIP? There is no rule in federal regulations that says a system must have a CIP. However, if a system applies for funding from a state revolving fund program or any other that examines its financial management practices as a condition of funding, one of the first things that will be asked is whether the system has a CIP. Having a CIP is both a practice and a measure of sound financial and managerial capacity in any water or wastewater system, regardless of regulation. Financial and managerial capacities are cornerstones of a system’s

A former town manager and town administrator for a number of small towns on Maryland's Eastern Shore, Jean Holloway is the training manager for the Environmental Finance Center at the University of Maryland, a position she has held since 1999.

sustainability.

Conversely, the lack of these capacities can lead to a system's inability to operate in compliance with regulations and operational requirements, and, thereby, its eventual failure.

If I don't have to have a CIP why should I go to the trouble to develop one? A CIP can offer a jurisdiction a number of advantages in addition to its inherent asset management benefits. A CIP provides a formal framework for the decision making process and a clear link to long range or master plans. It helps to focus a community's attention on goals, needs, and financial capability while helping to avoid the waste of public resources. It serves as a guide for system operations for the planned years and provides a formal vision for the system's future and its value to the community.

This planned approach to managing the community's assets helps to sustain the utility and to provide some stability to the rate structure over time. The plan and the planning process can also be used by the utility to heighten public awareness of the system, its activities, and its needs.

The need for a CIP is all the more evident in light of recent U.S. Environmental Protection Agency estimates that approximately \$224 billion would need to be expended for the

next 20 years for capital improvements to water and wastewater systems nationwide to keep them in compliance with health and regulatory standards. For systems serving fewer than

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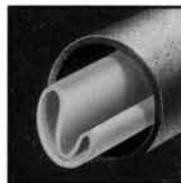
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10,000 in population, the potential impact is staggering. While large systems may have a higher total expenditure figure for their improvement needs, they have a larger customer base over which to spread the costs. The heavier burden on the small systems just means they need to be that much more careful in their planning and in how they spend their more limited resources.

Small systems need to get the optimum “bang for their buck” so that no time or money is wasted, and that means planning for expenses rather than simply covering them as they arise. One of the best and most basic ways to do that is to have a CIP.

GETTING STARTED

The first step in doing a CIP is to establish the framework for the process itself. This means determining the participants, the timetable, the procedures and the policies that will direct the planning process.

Establishing clear and defensible standards for judging and prioritizing proposed projects is one area where a written policy can be crucial to the success of a plan. Someone is bound to ask why one project was ahead of another on the list of planned improvements and a written set of standards that governed those decisions can go a long way toward satisfying such questions and potential criticisms.

Other policies may relate to things like borrowing versus self-funding, citizen input procedures or something as pedestrian as the format for the written CIP document. Looking at CIP documents from other jurisdictions may help identify a format and presentation that works for your community.

The next step is to do an inventory of the system and all its assets, fixtures and equipment, itemizing and evaluating the conditions found. Doing this inventory with an eye toward possible visual aids and data that will help support and sell the eventual plan is a good way to approach this step. Pictures of rusty pumps and data on time spent repairing ancient equipment will be a more effective tool than mere verbal assertions saying the same thing.

Data on wasted resources due to decrepit equipment can also be a big consideration in prioritizing projects. From this inventory, a list of needed

projects can be derived and the planning body can begin to prioritize projects to address the most urgent needs. Some of the considerations for prioritization could be:

1. Is there a legal mandate or order requiring a particular improvement?
2. Will the project eliminate an existing or potential threat to the public health?
3. Will the project benefit all the population or only a segment?
4. Will the project provide better safety for system employees?
5. Will the project improve efficiency, save money and time, or enhance service quality?

6. Will a project modernize an outdated facility or piece of equipment that has outlived its expected usefulness?

There are any number of questions that might be asked, depending on the community and its philosophy and goals for the future of the utility. There are times where the priority order of a project may be changed for funding availability, timing, or for factors outside of the objective considerations attached to prioritizing needs.

For example, a water line replacement planned for the third year of a plan may be moved up to the first year if it is learned that the state or county

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intends to re-pave the street over it. The same project could be moved back in priority to a later date if it is to coincide with another jurisdiction's plans for the related area.

ANALYZE FINANCES

The third step in the CIP process is to analyze financial capacity of both the system and its customers. The utility may look at things like trends and growth prospects along with its past financial performance for itself. Another consideration may be the portion of its average customer's income that goes to pay utility user charges when examining the impact of planned expenditures and debt on its customers.

It is important to be sure, in either context, that the projects included in the final plan will be affordable for the utility and its users. If the utility can't afford to pay the debt service, it will have to raise rates even higher than planned for that project. But, if the rates go up higher than the average residential customer can legitimately afford to pay, the utility's cash flow and bottom line revenue will suffer from unpaid bills. Either scenario would be a disservice to the consuming public.

From this financial analysis, the planning body can go forward with identifying specific funding options and programs for the various projects. Potential sources will likely include the traditional (grants, loans, and bonds), as well as the less traditional (impact fees, depreciation reserves, cash reserve funds and the like). The important thing is that general fund and tax dollars should not be spent to keep utility enterprise funds afloat. Enterprise funds are supposed to be exactly what the name implies: self-supporting enterprises.

By the same token, enterprise funds are not designed to be cash cows for the general fund. Either side of the coin is contradictory to the premise behind enterprise or "proprietary" funds – that users pay for what they use, rather than just for the generic service involved.

The final step in the planning process is to put the plan together, making sure to include all the pertinent information for each project proposed. The plan should contain the project description and purpose, alternatives considered and rejected

along with the reasons, cost estimates, proposed funding sources and the intended schedule of improvements. Be especially attentive to funding program requirements and whether or not your specific activities or projects are eligible for their funding.

Also make sure that you can meet the various application and advertising deadlines specified by the programs you are suggesting as sources. Allow enough lead time to advertise and meet any public hearing or notice requirements. After any internal re-

views and approvals and adoption by the governing body, it is critical that the CIP is not treated as just another study or exercise in planning that gathers dust on a shelf. It must be a guiding document as well as a fluid document that can be reviewed and revised as the community's needs and goals change.

A road map is only helpful if it is consulted before the driver gets lost. Likewise, a CIP is only helpful if it is referred to and reviewed regularly as the community moves forward. 

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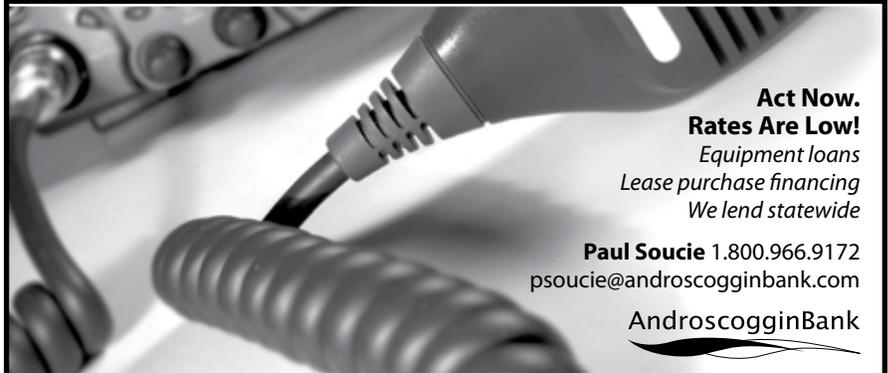
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Troy Cline was sworn in as the Town of Wiscasset's new police chief in a ceremony in early September. Most recently, Cline worked for the Hooksett, N.H. Police Department. Cline was easily the search committee's favorite. The committee was comprised of school and town officials, as well as members of the public.

Andrew Deci has been hired as the City of Bath's planner, replacing long-time Planner **Jim Upham**, whose retirement took effect Sept. 30. Deci, who moved to Bath from Virginia this summer, competed with 79 other candidates for the job. Most recently, Deci worked as planner in Spotsylvania County, Va. Deci moved to Maine after his wife, a Freeport native, was hired as a kindergarten teacher.

Wayne municipal officials recently honored **Jeanie Dorson** for putting out the town newsletter for 37 years. The Messenger consists of 10 pages. Dorson has gathered information and edited the newsletter since 1974.

Patricia Finnigan resigned in August as Portland assistant city manager to take the job of Camden town manager, effective this month. Finnigan, a Bangor native, worked as assistant manager for Maine's largest municipality for four years after serving as Auburn city manager for 13 years. She replaces **Roberta Smith**, who retired in August.

Dixfield residents and firefighters are mourning the loss of 40-year volunteer fireman **Tim Frost**, who died Sept. 7 at the age of 69. The town's fire department will retire his No. 13 unit number. He joined the department in 1970 and was named Dixfield Firefighter of the Year in 2004.

The town of Damariscotta has hired former municipal manager **Don Gerrish** to run the town until a search is completed for a permanent manager to replace **Greg Zinser**, who had served as the town's manager since 2006. Zinser left his position to take the job of manager of York County. Gerrish, who will work two days a week, is a consultant for Eaton Peabody, which will conduct the search.

Sabattus selectmen voted unanimously in September to hire **Andrew Gilmore** as their new town manager. He replaces **Rick Bates**, for whom he worked as a part-time assistant manager for 18 months. Gilmore worked as Wiscasset town manager from 2004 to 2007 and has operated a consulting company since then. Gilmore will continue living in Yarmouth.

Misty Gorski has been named Wiscasset planner, but will continue to help Waldoboro with ongoing projects as its former planning and development director and code enforcement officer. Gorski, who lives in Bowdoin, worked for Waldoboro for two years. Her efforts included helping to draft ordinances to regulate methadone and medical marijuana clinics.

Lisbon Town Clerk **Twila Lycette** was honored by her peers in September when she was named Maine's 2011 Town Clerk of the Year. Lycette, who has been Lisbon's clerk for 25 years, was surprised during a meeting in Waterville of the Maine Town and City Clerks Association. In addition to her family, many members of the Lisbon municipal staff also attended the event.

Former Auburn Councilor **Ron Potvin**, who served from 2007-2009, has announced he will run for the council in November. Potvin had run unsuccessfully for mayor.

Danny Perron was elected in September to replace Selectman **Glenn Hinckley**, who resigned in June, citing the stress of the job. Perron defeated Wally Litchfield by a vote of 34-26 in a special town meeting. At about the same time, long-time Selectman **Mark Silber** resigned after 29 years. Although he gave no reason in his resignation letter, Silber said during

an August meeting that he could not sleep or eat because of allegations he was helping a wind project developer gain approval to build turbines in one area of the western Maine town. Silber, who took pride in serving the town with honesty and integrity, immigrated to the U.S. in 1959, having fled the former USSR to Warsaw, Poland, before arriving in America. He is a Harvard graduate, an author and historian.

Lewiston City Councilor **Larry Poulin**, who has served two terms on the council, announced last month that he will not seek another term in November. He said family and health issues led him to his decision.

Veazie Town Manager **Bill Reed** was terminated in September and given a severance package after working for the Bangor suburb for 19 years. Residents who attended Sept. 12 meeting apparently were surprised by the action. Selectmen hired retired Holden manager **Larry Varisco** as interim manager.

John Spear has been hired as Waldoboro town manager, effective in mid-September. He is a former manager of Vinalhaven and administrative assistant to the Salisbury, Mass., selectmen. He also served as a selectman in the town of South Thomaston for 12 years. His experience includes working as business manager for the Greater Thomaston school district for 15 years.

Belfast Police Chief **Jeff Trafton** has resigned to take the job of chief deputy for the Waldo County sheriff. Trafton will start his new duties on Nov. 1. He resigned as a Maine state trooper in 2005 and was hired almost immediately as Belfast chief to replace former chief **Bob Keating**. 

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)

Auburn: Councilors voted 6-0 in September to allow residents to keep as many as six laying hens in their backyards if their lots are at least a half-acre. Residents with one-acre or larger lots can keep as many as 12 birds. A maximum was set at 36 hens.

Augusta: The council appears ready to endorse a planning board proposal to change the city's noise ordinance to ban outdoor speakers at some businesses while allowing speakers at drive-through businesses, only perhaps a bit lower in volume. The proposed change would give businesses that use speakers, such as car dealerships, three years to comply. Some councilors said that was too long and predicted businesses would wait until the three-year grace period lapses before making changes. City staff has fielded complaints for years about the noise.

Biddeford: A city councilor is questioning whether it is time to change the city's dog ordinance after a police officer was recently attacked by a pit bull. There have been several other reports of dog attacks, not only in Biddeford, and Councilor David Bourque is advocating that certain breeds of dogs be muzzled while in public. In addition to the Biddeford attack on the officer, pit bulls and other aggressive dogs have mauled numerous adults and children in Maine this year. At the same time, police in western Maine and elsewhere are concerned about people who have stolen as many as a dozen pit bull dogs and suspect they are involved with dog fighting. The Biddeford officer who was attacked shot and killed the dog when it came after him a second time after biting his leg.

Cornville: Voters approved accepting an \$18,000 grant from the Stephen and Tabitha King Foundation to establish a public library. The vote was 43-34 during a packed-house spe-

cial town meeting in September. Some residents questioned how the town would fund the library once the grant money runs dry, but former school librarian Brenda Hogate said she knows of other grants that will be available in the future.

Ellsworth: The council voted to sell two acres of city-owned land to a developer of a senior housing complex. The divided council decided to sell only after doubling the price to \$30,000. Councilors had been criticized for setting a low selling price, considering the land's proximity to Leonard Lake. The city still owns about two lakefront acres that will abut the 26-unit complex. That land will be protected from future development, officials said.

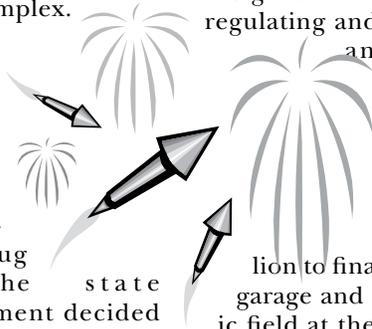
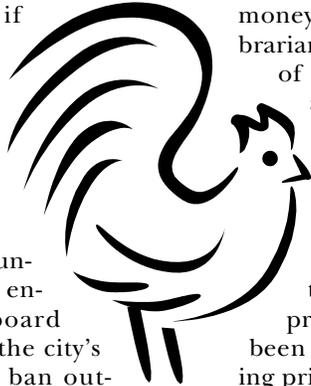
Fort Kent: A portion of the town's mile-long Main Street paving project will be dug up and redone after the state transportation department decided some of the asphalt mix did not meet standards. About 450 tons of pavement reportedly will be removed, representing about four-tenths of a mile of roadway. The rejected asphalt likely was ruined by heavy rains and the effects of tornadoes that tore through

northern Maine this summer, officials said.

New Gloucester: The town's cable TV committee will broadcast selectmen and other municipal meetings in real time. The online service is offered by Town Hall Streams, based in York. The meetings have been available live on cable TV and that service will continue. The online meetings will be archived so computer users may view them at any time.

Portland: The city council voted unanimously to ban the sale, possession and use of fireworks in response to a new state law that expands the use and sale of fireworks in Maine, but also gives municipalities the option of regulating and prohibiting their use and sale. Other towns and cities are considering similar action.

Yarmouth: Residents will be asked in 2012 to consider borrowing up to \$7 million to finance a new public works garage and an artificial turf athletic field at the high school. Officials said they are working on the proposals early in hopes of gaining approval next year. The town will be paying off two 20-year bonds this year, and officials hope that will help garner support for new borrowing. 



NEW ON THE WEB

Here are some highlights of what's been added at www.memun.org since the last edition of the *Maine Townsman*.

- **Released prisoners.** The U.S. Justice Department released a "toolkit" designed to help municipal officials deal with jail and prison inmates who have served their terms and are released back into their communities.
- **Municipal official survey.** The University of Maine and Margaret Chase Smith Center released a 52-page "Municipal Official Survey Technical Report" that queried 1,100 municipal officials about issues, attitudes and resources that they consider to be the most helpful.
- **Celebrating service.** MMA, as part of its 75th Anniversary, is recognizing many officials for their tireless years of public service. Oral histories – first-person interviews – can now be heard at the website. Walter Foster of Friendship, Linda Boudreau of South Portland, Kenneth Michaud of Fort Kent, Roy Gardner of Allagash and Grace Hatton of Charlotte were the first five subjects whose interviews are available for listening.



Municipal Bulletin Board

ELECTED OFFICIALS: ELLSWORTH

MMA officials will hold an Elected Officials Workshop on Oct. 18 at the Ramada Inn in Ellsworth. The workshop will run from 4:30 to 8:30 p.m. and includes a light meal. Registration begins at 4 p.m.

The workshop is a "must" for both newly elected and veteran officials as it provides updates to legal requirements regarding: your rights as officials; open meeting requirements; conflicts of interest; liability issues; and, the Maine Freedom of Access law. Officials who attend the session meet the state's Right to Know training requirements and will receive certificates. A section on media relations and communications was added in 2010.

The cost is \$40 for MMA members and \$60 for non-members. Registration is available through the MMA website at www.memun.org.

LABOR & EMPLOYMENT LAW

This workshop is designed to help anyone who supervises or manages municipal employees, with current information and updates on employment laws and regulations. It will be held on Tuesday, Oct. 25 at the Maine Municipal Association Conference Center in Augusta.

Other topics include: how to investigate workplace issues; personnel policies; and dealing with difficult employees. The presenters are: Linda McGill, Glenn Israel and Matt Tarasevich, attorneys with Bernstein Shur; Suzanne Benoit with Benoit Consulting; David Barrett, head of Personnel & Labor Relations at MMA; Jonathan Goodman, an attorney with Troubh Heisler; and Mike Miles, Director of Human Resources with the City of Portland. The cost is \$60 per person for MMA members and \$90 for non-members.

FIRE CHIEFS' FALL CONFERENCE

The Maine Fire Chiefs' Association will hold its annual Fall Conference at the Marriott Portland Sable Oaks resort on Oct. 26-28. The featured presenter is J. Curtis Varone, who is an attorney from Rhode Island and is the retired

Deputy Assistant Fire Chief from Providence, R.I.

The conference starts with the MFCFA's annual business meeting and awards presentation at 3 p.m. on Wednesday, Oct. 26. Varone starts his presentation at 9:30 a.m. on Oct. 27, following registration (8 a.m.), breakfast and welcoming remarks. Varone's topics include: leadership and liability; the four policies your fire department needs; and common misunderstandings about firefighters' rights to remain silent.

Costs vary depending on how many days attendees wish to attend. Overnight-stay reservations are available at the Sable Oaks resort.

MUNICIPAL LAW FOR TAX COLLECTORS

Rebecca Seel and Susanne Pilgrim, attorneys with MMA's Legal Services Department, and F. Bruce Sleeper, with the law firm Jensen Baird Gardner & Henry, will present a one-day workshop on Municipal Law for Tax Collectors and Treasurers on Nov. 9, at the MMA Conference Center in Augusta.

The workshop begins with registration at 8:30 a.m. and will end at 3:30 p.m. The cost is \$50 for MMTCTA members and \$60 for non-members; and the fee includes a light breakfast and lunch. Among the many topics that the attorneys will explore: qualifications for office; record preservation rules; liability; assessment and commitment issues; reserve accounts; and dedicated revenues.

BRACED WALL CONSTRUCTION

The Maine Building Officials & Inspectors Association will hold a workshop on braced wall construction on Nov. 9 in Florian Hall at the Public Safety Building, 45 Commerce Drive, Augusta. Mark Halverson of the American Plywood Association will lead the workshop, which starts with registration at 8 a.m. and ends at 4 p.m. Halverson is an expert in the areas of residential and energy conservation building codes.

The event is free for MBOIA members who pre-register by Nov. 1. The cost is \$50 for MBOIA members who do not pre-register. Non-members will pay \$75 if they pre-register and \$100 if they do

not. A continental breakfast and lunch will be provided.

All of the upcoming workshops can be found on the MMA website. Use the following link:

<http://www.memun.org/public/MMA/svc/training.htm>

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Total no. copies printed	4,536	4,500
Paid circulation		
Mailed Outside-County	3,756	3,693
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Total paid distribution	4,067	3,991
Free or nominal rate distribution		
Outside County	290	238
In-County	33	41
Mailed at other classes through USPS	2	2
Outside the mail	38	38
Total free distribution or nominal rate distribution	363	319
Total distribution	4,430	4,310
Copies not distributed	106	190
Total	4,536	4,500
Percent Paid	91.8%	92.6%

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

Eric Conrad, Editor

FOAA NOW REQUIRES RECORD OF MEETING

Maine's Freedom of Access Act (FOAA) has been amended to require a record of all public proceedings of a public body except where the body is a purely advisory one.

Public Law 2011, c. 320 (eff. Sept. 28, 2011) amends 1 M.R.S.A. § 403 to require that a record be made of each public proceeding within a reasonable time after the meeting and that the record be open to public inspection. At a minimum, the record must include (1) the time, date and place of the meeting, (2) the members of the body recorded as either present or absent, and (3) all motions and votes taken, by individual member if by roll call. There is no requirement in § 403 for detailed minutes of deliberations, although certain types of proceedings may require a detailed record (see "Board Meeting Minutes," *Maine Townsman*, "Legal Notes," July 2009).

An audio, video or other electronic recording of a public proceeding is deemed to satisfy this requirement.

Although technically an unfunded mandate, the new requirement for meeting records is consistent with our longstanding advice and the time-honored practice of most municipal boards. While it is now the law, however, § 403 expressly provides that the failure to make or maintain a record does not affect the validity of any action taken at a public proceeding.

As noted, advisory bodies that make recommendations but have no decision-making authority are exempt.

For other requirements that attach to public proceedings, see our "Information Packet" on the "Right to Know" law, available free to members at www.memun.org. (By R.P.F.)

DELINQUENT TAXES & SMALL CLAIMS COURT

One of the several options or legal remedies available to tax collectors for enforcing the payment of delinquent taxes is a civil action or lawsuit, either in the collector's own

name or in the name of the municipality (see 36 M.R.S.A. §§ 1031, 1032, respectively). A civil action may be used to collect either real or personal property taxes, although given the advantages of a real estate tax lien, suit is probably most useful for the collection of personal property taxes. If the amount of the tax debt does not exceed \$6,000, exclusive of interest and costs, the suit may be brought in small claims court (see 14 M.R.S.A. §§ 7481-7487).

A small claims proceeding is designed to be simple, speedy and informal, and it has the added advantage of not requiring an attorney even if suit is filed in the name of the municipality.

A small claim is commenced by the filing of a complaint with the Maine District Court and service of process on the defendant. (There are modest fees for this, but the court may order the defendant to reimburse them if the plaintiff prevails.) A hearing or

trial date will then be set, but before hearing, the parties are required to attempt to resolve the dispute through mediation. If unsuccessful, they will proceed to a contested hearing before the court.

A small claims hearing is without a jury, and the technical rules of evidence do not apply. Nonetheless, the plaintiff must prove the elements of the claim in order to prevail. (In the case of delinquent taxes, this would include proof of the tax collector's legal status, the tax commitment, identification of the property and the owner, a tax bill, and evidence of a proper demand, among other things.) If successful, the plaintiff will be awarded a money judgment, which, if not paid, may be enforced by various remedies, including court-ordered withholding of wages, the forced turnover and sale of the defendant's property, and contempt of court (see 14 M.R.S.A. §§ 3120-3126).

Small claims court may not be the

The logo features a stylized blue 'M' with a house-like shape on top, followed by the words 'Municipal Calendar' in a blue serif font.

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

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

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

PRIOR TO NOVEMBER 8 — Election Day. Registrars of voters shall accept registration prior to the November 3 election according to the time schedule of their population group (21-A §122[6]).

— The Registrar shall publish his/her

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

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

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

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

NOVEMBER 24 — Thanksgiving Day, a legal holiday (4 MRSA §1051; 20-A §4802)

answer in every case involving unpaid taxes, but from what we hear from some tax collectors, more collectors should try it. For the reluctant, it may be helpful to retain a mentoring attorney for a case or two, before routinely prosecuting their own claims. The “tuition” could be well worth it.

The website for Maine’s court system has some great materials on small claims actions, including a *Guide to Small Claims Proceedings*, required forms, and related links. The URL is http://www.courts.state.me.us/maine_courts/specialized/small_claims/index.shtml.

For a more detailed discussion on the use of lawsuits, including small claims actions, for collecting unpaid property taxes, see Chapter 4 of MMA’s *Tax Collectors & Treasurers Manual*, available free to members at www.memun.org.

Incidentally, the statute of limitations or time within which suit must be filed in order to collect unpaid taxes is six years from the time the tax first became delinquent (see 14 M.R.S.A. § 752). (By R.P.F.)

PROBATIONARY EMPLOYEES

Question: What is a probationary employee?

Answer: A probationary employee is a new employee who has not yet completed his or her probationary period.

Under Maine law, a municipal employer may establish a reasonable probationary period not to exceed six months or the length of time in effect in the municipality on January 1, 1984, whichever is greater (see 30-A M.R.S.A. § 2701). There is an exception for police officers, who upon being hired must complete a probationary period of at least one year after graduation from the Maine Criminal Justice Academy or the date the board waives the basic training requirement.

The principal difference between a probationary employee and a regular employee who has completed his or her probationary period is that a probationary employee may be terminated “at will” – without advance notice or a hearing or “cause.” An

employee who has completed his or her probationary period, on the other hand, may be terminated only for cause, after notice and hearing (see 30-A M.R.S.A. § 2601).

A municipal employer’s probationary period for new employees should be clearly stated in a personnel policy and should be applied uniformly to all new permanent hires. (Temporary new hires for less than six months will always be probationary employees.)

A probationary period may not be imposed or extended beyond the statutory six-month period. It may be shortened, but we can think of no good reason for doing so. A probationary period provides an employer with the opportunity to evaluate a new employee’s performance and, if unsatisfactory, to terminate that employee without the burden of a formal process or the potential liability of a wrongful termination. Six months seems to us a reasonable time for this, and we do not recommend that it be abbreviated.

Although cause is not required in order to terminate a probationary employee, Maine’s “Right to Know” law nevertheless requires a written record of every decision to dismiss a public employee, whether probationary or not (see 1 M.R.S.A. § 407(2)). In the case of a probationary employee, this record need not include any reasons or findings of fact amounting to cause; it could simply state that, for example, the relationship proved unsatisfactory.

For more on just cause and due

process requirements for employees who are no longer probationary, see MMA’s “Information Packet” on employer/employee issues, available free to members at www.memun.org. (By R.P.F.)

FOAA AMENDED TO SHIELD SOCIAL SECURITY NUMBERS

Maine’s Freedom of Access Act (FOAA) has been amended to shield what most people probably thought was already protected from public disclosure – social security numbers.

Public Law 2011, c. 320 (eff. Sept. 28, 2011) amends the definition of “public records” in 1 M.R.S.A. § 402(3) to exclude social security numbers generally, no matter where they may be found in State or local government records. Previously, only those numbers in the possession of the Department of Inland Fisheries and Wildlife were excluded, perhaps because that department was the only one that had ever specifically asked the Legislature for an exclusion. In any case, social security numbers are now protected against public disclosure regardless of which agency has them or for what purpose they were collected.

In records that are otherwise public, social security numbers should now be redacted or obscured before the record is made available for public inspection or copying.

To search the over 300 statutory exceptions to the FOAA’s definition of “public records,” go to www.mainelegislature.org/legis/foa/. (By R.P.F.) 



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