



TOWN OF KENNEBUNKPORT, MAINE

- INCORPORATED 1653 -

MAINE'S FINEST RESORT

Board of Selectmen Agenda Village Fire Station – 32 North Street May 12, 2016 – 7:00 PM

1. Call to Order.
2. Approve the April 28, 2016, selectmen meeting minutes.
3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)
4. Consider a renewal malt, spirituous, and vinous liquor license submitted by Jackson Yordon and Alison Riggieri d.b.a. Salt and Honey, 24 Ocean Avenue.
5. Consider Arbor Day Proclamation.
6. Appoint Patrick Briggs as Tree Warden (term until July 2016).
7. Appoint Stephen Doe to the Shade Tree Committee (term until July 2016).
8. Report from Beach Advisory Committee on proposal for plover intern.
9. Consider request from Beach Advisory Committee to adopt rules to ban drones on Goose Rocks Beach.
10. Discuss dismantling wind turbine near the police station.
11. Award bids for police:
 - a. Personnel lockers at the police station.
 - b. Generator at the police station.
12. Review of May 10, 2016, Special Selectmen's Meeting.
13. Consider amendment to the Retirement Health Savings Plan.
14. Approve street opening permit application submitted by K.K. & W. Water District to renew and relocate existing water from Summit Avenue 575 ft north toward Endcliff.

15. Authorization to write-off uncollected parking ticket balances.
16. Other business.
 - a. MMA Legislative Policy Committee nomination.
17. Approve the May 12, 2016, Treasurer's Warrant.
18. Adjournment.

**Town of Kennebunkport
Board of Selectmen Meeting
April 28, 2016
7 p.m. – Village Fire Station – 32 North Street**

Minutes of the Selectmen's Meeting of April 28, 2016

Selectmen attending: Stuart E. Barwise, Patrick A. Briggs, Allen A. Daggett, and Sheila Mathews-Bull

Selectmen absent: Ed Hutchins

Others: Michael Claus, Michael Davis, Arlene McMurray Laurie Smith, and others

1. Call to Order.

Chair Matthews-Bull called the meeting to order at 7:02 PM.

2. Approve the April 7 and 14, 2016, selectmen meeting minutes.

Motion by Selectmen Daggett, seconded by Selectman Barwise, to approve the April 7, 2016, selectmen meeting minutes. **Vote:** 4-0.

Motion by Selectmen Daggett, seconded by Selectman Briggs, to approve the April 14, 2016, selectmen meeting minutes. **Vote:** 4-0.

3. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.)

There were not comments.

4. Consider a liquor license renewal application for CAI Properties, LLC, d.b.a. Cape Arundel Inn, 208 Ocean Avenue.

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the liquor license renewal application for CAI Properties, LLC, d.b.a. Cape Arundel Inn, 208 Ocean Avenue. **Vote:** 4-0.

5. Consider a special amusement permit renewal application for CAI Properties, LLC, d.b.a. Cape Arundel Inn, 208 Ocean Avenue.

Motion by Selectmen Daggett, seconded by Selectman Barwise, to approve the special amusement permit renewal application for CAI Properties, LLC, d.b.a. Cape Arundel Inn, 208 Ocean Avenue. **Vote:** 4-0.

- 6. Consider a liquor license renewal application for Tides Beach Club, LLC, d.b.a. Tides Beach Club, 254 Kings Highway.**

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the liquor license renewal application for Tides Beach Club, LLC, d.b.a. Tides Beach Club, 254 Kings Highway. **Vote:** 4-0.

- 7. Consider a special amusement permit renewal application for Tides Beach Club, LLC, d.b.a. Tides Beach Club, 254 Kings Highway.**

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the special amusement permit renewal application for Tides Beach Club, LLC, d.b.a. Tides Beach Club, 254 Kings Highway. **Vote:** 4-0.

- 8. Consider a liquor license renewal application for The Boathouse of Kennebunkport, LLC, d.b.a. The Boathouse, 21 Ocean Avenue.**

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the liquor license renewal application for The Boathouse of Kennebunkport, LLC, d.b.a. The Boathouse, 21 Ocean Avenue. **Vote:** 4-0.

- 9. Consider a special amusement permit renewal application for The Boathouse of Kennebunkport, LLC, d.b.a. The Boathouse, 21 Ocean Avenue.**

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the special amusement permit renewal application for The Boathouse of Kennebunkport, LLC, d.b.a. The Boathouse, 21 Ocean Avenue. **Vote:** 4-0.

- 10. Consider a liquor license renewal application for Fishing Pole Lane, LLC., d.b.a. Hidden Pond, 354 Goose Rocks Road.**

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the liquor license renewal application for Fishing Pole Lane, LLC., d.b.a. Hidden Pond, 354 Goose Rocks Road. **Vote:** 4-0.

- 11. Consider a special amusement permit renewal application for Fishing Pole Lane, LLC., d.b.a. Hidden Pond, 354 Goose Rocks Road.**

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the special amusement permit renewal application for Fishing Pole Lane, LLC., d.b.a. Hidden Pond, 354 Goose Rocks Road. **Vote:** 4-0.

- 12. Consider a liquor license renewal application for Coveside Resort, LLC., d.b.a. The Lodge on the Cove, 29 South Main St.**

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the

liquor license renewal application for Coveside Resort, LLC., d.b.a. The Lodge on the Cove, 29 South Main St. **Vote:** 4-0.

13. Consider a special amusement permit renewal application for Coveside Resort, LLC., d.b.a., The Lode on the Cove, 29 South Main Street.

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the special amusement permit renewal application for Coveside Resort, LLC., d.b.a., The Lode on the Cove, 29 South Main Street. **Vote:** 4-0.

14. Consider a liquor license renewal application for Ivy One, LLC., d.b.a., Old Fort Inn, 8 Old Ford Avenue.

Motion by Selectmen Barwise, seconded by Selectman Daggett, to approve the liquor license renewal application for Ivy One, LLC., d.b.a., Old Fort Inn, 8 Old Ford Avenue. **Vote:** 4-0.

15. Countersign the RSU 21 Budget Validation Referendum Election Warrant.

Motion by Selectmen Barwise, seconded by Selectman Briggs, to countersign the RSU21 Budget Validation Referendum Election Warrant. **Vote:** 4-0.

16. Revisit the Dock Square Parking Lot budget.

Ms. Smith mentioned that at the previous meeting, the Board voted on the net operating amount of \$318,000. She said they need to vote on the expenditure amount including the transfers to the general fund.

Motion by Selectmen Daggett, seconded by Selectman Briggs, to reapprove the Dock Square Parking Lot budget total expenditures for \$338,301. **Vote:** 4-0.

17. Sign the Certificates of Commitment of Sewer User Rates.

Motion by Selectmen Daggett, seconded by Selectman Barwise, to sign the Certificates of Commitment of Sewer User Rates. **Vote:** 4-0.

18. Approve a street opening permit for Sea Side Hotel Association on Ocean Avenue for new underground power from the pole across the street.

Motion by Selectmen Barwise, seconded by Selectman Briggs, to approve the street opening permit for Sea Side Hotel Association on Ocean Avenue for new underground power from the pole across the street. **Vote:** 4-0.

19. Award the bid for Mills Road survey work.

Highway Superintendent Michael Claus said they need a survey to see where they can make pedestrian improvements. He received seven proposals for this survey work and recommends awarding the bid to Dow and Coulombe.

Motion by Selectmen Briggs, seconded by Selectman Daggett, to award the bid for Mills Road survey work to Dow and Coulombe at a cost of \$27,000. **Vote:** 4-0.

20. Accept \$100 donation from Karen MacGregor in memory of Peter Sargent's birthday to be dedicated toward public health outreach programs.

Motion by Selectmen Daggett, seconded by Selectman Barwise, to accept the \$100 donation from Karen MacGregor in memory of Peter Sargent's birthday to be dedicated toward public health outreach programs. **Vote:** 4-0.

21. Other business.

Town Manager Laurie Smith said that the Budget Board and Board of Selectmen voted to fund the York County Food Rescue \$500. The Food Rescue uses donated surplus food, and there have been issues with the quality of food, e.g., mold, food with expiration dates already past. Since residents already have access to the Church Community Outreach Services and most attend the Outreach Pantry, she discussed these issues with the Kennebunk Town Manager. Both agreed to end their relationship with the Food Rescue in May. Discussion followed on what to do with the \$500. It was agreed to inform the Budget Board of this change, and to handle the change at Town Meeting.

Selectman Daggett said he would like to put dismantling the windmill near the police station on the next agenda. He said neighbors have complained about the noise and the company that installed it went bankrupt. This means that they cannot get data from the software on its efficiency.

Ms. Smith added that the windmill makes a whining sound and with the construction going on at the police department, now is the best time to remove it. The Board agreed to put this on the next agenda and to invite the Conservation Commission and Police Chief to the next meeting.

Chair Matthews-Bull thanked the highway crew for the great work they did on her road.

Ms. Smith said she met with the engineers and fishermen, and they all agreed on the Government Wharf bait shed design.

Ms. Smith announced that they need to have a new server installed at town hall, which takes approximately four hours. They would like to install it on

May 11 in the morning. She will let the Board know for sure the exact time and date.

22. Approve the April 28, 2016, Treasurer's Warrant.

Motion by Selectman Barwise, seconded by Selectman Briggs, to approve the April 28, 2016, Treasurer's Warrant. **Vote:** 4-0.

23. Adjournment.

Motion by Selectman Barwise, seconded by Selectman Briggs, to adjourn. **Vote:** 4-0.

The meeting adjourned at 7:30 PM.

Submitted by Arlene McMurray
Administrative Assistant

④

This application has been reviewed and approved by the following Municipal Officials,
whose signatures are on file with the Town Clerk:

✓

Police Chief

✓

Fire Inspector

✓

Code Enforcement Officer

Salt + Honey

Upri Dufae

Town Clerk

(4)

**BUREAU OF ALCOHOLIC BEVERAGES
DIVISION OF LIQUOR LICENSING & ENFORCEMENT
8 STATE HOUSE STATION
AUGUSTA, ME 04333-0008**



Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded.

To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

DEPARTMENT USE ONLY

LICENSE NUMBER:

CLASS:

DEPOSIT DATE

AMT. DEPOSITED:

BY:

CK/MO/CASH:

PRESENT LICENSE EXPIRES 3'26'2016

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

☒ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTINONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ GOLF CLUB (Class I,II,III,IV)

☐ OTHER: _____

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) --(Sole Proprietor, Corporation, Limited Liability Co., etc.)		2. Business Name (D/B/A)	
DOB:		<u>Salt and Honey</u>	
<u>Jackson Jordan</u> DOB: <u>12-13-1983</u>			
<u>Alison Riggieri</u> DOB: <u>4-16-1979</u>		Location (Street Address)	
Address <u>29 Boga Street</u>		<u>24 Ocean Ave</u>	
		City/Town <u>Kennebunkport</u>	State <u>Maine</u> Zip Code <u>04046</u>
		Mailing Address	
		<u>Po Box 1459</u>	
City/Town <u>Kennebunk</u>	State <u>Me</u> Zip Code <u>04043</u>	City/Town <u>Kennebunkport</u>	State <u>Me</u> Zip Code <u>04046</u>
Telephone Number <u>207-235-0000</u>	Fax Number	Business Telephone Number <u>207-204-0195</u>	Fax Number
Federal I.D. # <u>602540000</u>		Seller Certificate #	

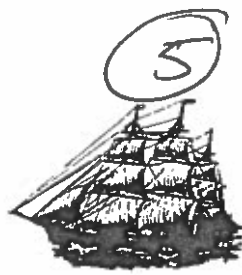
EMAIL ADDRESS: Jackson @ thesaltandhoney.com

3. If premises is a hotel, indicate number of rooms available for transient guests: _____

4. State amount of gross income from period of last license: ROOMS \$ _____ FOOD \$ 320,000 LIQUOR \$ 16,000

5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

If YES, complete Supplementary Questionnaire



TOWN OF KENNEBUNKPORT, MAINE

- INCORPORATED 1653 -

MAINE'S FINEST RESORT

ARBOR DAY PROCLAMATION 144th Anniversary-1872-2016

Whereas, In 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

Whereas, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

Whereas, 2016 is the 144th Anniversary of the holiday and Arbor Day is now observed throughout the nation and the world, and

Whereas, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, and provide habitat for wildlife, and

Whereas, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products, and

Whereas, trees in our town increase property values, enhance the economic vitality of business areas, and beautify our community, and

Whereas, trees, wherever they are planted, are a source of joy and spiritual renewal.

Whereas, Kennebunkport has been recognized as a Tree City USA by The National Arbor Day Foundation for the past 39 years, and desires to continue its tree-planting ways,

NOW, THEREFORE, WE, the Selectmen of the Town of Kennebunkport, do hereby proclaim May 20, 2016, as the 144th Anniversary Celebration of ARBOR DAY.

Further, we urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands.

Dated this 12th day of May, 2016

Sheila Mathews-Bull

Stuart E. Barwise

Allen A. Daggett

Patrick A. Briggs

Edward W. Hutchins

8

Request for money to obtain an Intern for Goose Rocks Beach for Piping Plover Education/Monitoring

Last year Biddeford, Wells and Goose Rocks beaches had a paid Intern for education of the public and monitoring of the piping plovers. All the Interns were UNE students, and were specially selected by Dr. Noah Perlut, a professor at UNE. Compensation for the Interns came from York County Audubon and Rachel Carson NWR. The Intern that served at Goose Rock worked for 10 weeks, 20 hours a week, and was paid \$2000.00, a donation from Rachel Carson NWR for this specific purpose. This year an Intern has been provided for Biddeford beaches only. York County Audubon has contributed to this Intern's salary.

Goose Rocks does not have an Intern at this time. I have asked Rachel Carson NWR, Maine Audubon and IF&W if they would be able to help us again this year. All have told me that they do not have the funds available. IF&W said that they would look into the possibility of helping us next year. I believe that the Intern last year did an excellent job and provided an excellent service to all the people and plovers of Goose Rocks.

The Interns are trained by and under the supervision of Maine Audubon. Maine Audubon will educate the interns about plovers and how to talk to people about them. This is a quote from Maine Audubon, "I think education is key (they are NOT enforcement)- and their role is to monitor nests/chicks and talk to the public about them. The Intern can also help with general beach information/education. One big challenge at this point in the season will be getting a person that could help- I will talk to Noah to see if he has any potential candidates."

So as you can see this is not a "given", but I am still here to ask the BAC for \$3000.00 to pay the salary for an Intern for Goose Rocks Beach, for 20 hours a week, for 10 weeks. I would suggest that the money be given to Maine Audubon as has been done for the other Interns last year and that the Intern be under the supervision and responsibility of Maine Audubon.

Why more money than last year? Last year, the salary for other Interns was \$3500.00.

except for Goose Rocks, which was \$2000.00.

It is late.

We want a good Intern.

It is a fair salary, \$15.00/hour. They work weekends and holidays as needed. (I do not know what the other intern is being paid this year.)

Why BAC? It fits in our mission statement.

We have the money.

Shows 'good faith'

And honestly, you are my last hope.

What if no Intern can be found? BAC would get all their money back.

Cons for giving money? I see only one. You may worry that I will come back next year asking again. I may. :)

Respectfully submitted, Carol Sherman

9

Request of Beach Advisory Committee for Board of Selectmen to Adopt Rule to Ban Drones on Goose Rocks Beach

Why families come to and love GRB?

GRB is a special and rather unique place with a long tradition of family vacations that go on for generations. While we are all drawn to its natural beauty we are equally drawn to a space that is peaceful and tranquil. With hundreds or thousands using the same limited space on summer days, the only sounds that can now be heard are those of conversation, laughter and small waves landing. Thankfully, jet skis are not permitted near the beach. Boom boxes are unofficially banned -- if someone from "away" turns on loud music, it would not be uncommon for someone nearby to tell them in a friendly way that loud music is not welcome at the beach.

Drones are new and are inconsistent with the use of the beach and more specifically the purposes of the Beach Use Ordinance and the Beach Use Agreement? Is Goose Rocks an appropriate place in town to fly a drone? No.

The FAA reports that approximately 1,000,000 drones were purchased by the end of 2015 and more recently reported that 400,000 owners have completed their simple registration process. Drones started flying over the beach and nearby homes last summer. This has continued off season --people have been driving to the beach and flying their drones over the beach and as far back as the bridge on New Biddeford Road. Two members of the Beach Advisory Committee (one beach front, one on the river) have had drones fly off the beach over their homes last summer, apparently taking photos as they hovered for some time just in front of and over the homes. Given the large expanse that is Goose Rocks Beach, it is probably the largest open space used by the public in town where visual contact with the drone can be maintained (which is required by the FAA rules).

Given this new and developing situation, the Beach Advisory Committee took up this issue at two meetings this winter and Chief Sanford was invited to address the issue at our March meeting. The Chief reported on jurisdictional issues with the FCC and indicated (as had counsel to the town -See Exhibit 1) that the extent of the town's jurisdiction was unknown (see Exhibit 2), primarily because the FAA has been slow to address the issue.

The committee voted 5-2 to ask the Board of Selectmen to adopt a rule to ban drones over the beach. The committee would have preferred an ordinance amendment but this was not possible given the start of the summer season and the timing required for changes to ordinances. The reasons given by members voting in favor of the ban included safety for beach users, privacy of those using the beach and those living in adjacent upland homes, nuisance (visual and sound) and the impact to nesting endangered species. The BAC has had testimony in the past from the state that the presence of persons and dogs are particularly disruptive to nesting of these protected birds. Additionally, when the invasive species project was undertaken last year, specific restrictions were imposed so that mechanical devices would be kept several hundred feet from a nearby nesting area.

While one member felt it was better to wait to see if the drones were that problematic, the majority of the committee felt it was better to be proactive because the

potential harm was real, and the drones were already present and having an impact. One member of the Goose Rocks community emailed to say she had just run in a 5k race in Boston in a park and some loving husband crashed his drone into a tree and she and those near her had shattered drone parts landing on them.

Can and should the Board of Selectmen adopt a rule to ban drones?

The Beach Advisory Committee believes the BOS can and should ban drones, both under the Beach Use Agreement and general public safety authority. While drones are not specifically banned under the Beach Use Agreement, we believe, in light of the stated "purposes" of the ordinance, they are banned under the general terms of the Beach Use Ordinance and Beach Use Agreement.

The stated purposes of the Ordinance "is to provide for the safety, enjoyment, health and welfare of persons using Goose Rocks Beach....., while preserving the Beach as a natural resource, by authorizing, among other things, regulations to protect wildlife, dune areas and the Beach environment and regulations for recreational use of portions of the Beach that are subject to use pursuant to the BUA....while respecting the private property rights of beachfront property owners, and devising regulations governing maintenance, management, operation and protection of the Beach designed to preserve its continued use as an environmentally friendly, family oriented beach to be enjoyed by Kennebunkport residents and property owners, their guests and invitees, and members of the general public using the Beach".

Also the "use" of the Beach Premises is defined in the Ordinance as "for active and passive recreational and recreational related purposes and activities customarily associated with, or conducted upon, beaches, including, without limitation, swimming, sunbathing, walking and typical "beachgoer" uses, subject to the limitations provided herein pertaining to the use of the Reserved Areas..."

We do not believe that flying drones over the beach is consistent with the Purposes of the BUA, nor is the activity a customary use of the beach. One of the complaints voiced at the time the Almeder lawsuit was initiated related to large kites being both a nuisance and a danger. Drones are untethered and present a far greater threat to public safety than a kite.

Additionally, the ordinance is not cast in concrete and the ordinance also contemplates that other rules or regulations would be adopted as time went by so that the purposes of the agreement were achieved and maintained. In addition to a specific methodology to amend the ordinance (see Section VII(D), the Ordinance states that "The municipal officers may, upon consultation with the Beach Advisory Committee, adopt regulations implementing this Ordinance, including but not limited to the following.....: (2) Regulations to protect the environment, including for example, signage to protect dune grass, marine life and wildlife on the Beach".

Would a ban be allowed under the new FAA rules?

While we understand that this is a new area of the law and the interaction between Federal and local law is developing, it is also clear that local communities can regulate flying over private property. The FAA's "Know before you Fly" guide (attached as Exhibit 3) states clearly that users should "Check out and follow local laws and ordinances before flying over private property". That important requirement (in addition to another

one which requires an owner to "contact the airport or control tower before flying within five miles of an airport -- this includes Biddeford Airport according to the FAA's app "B4UFIY") clearly demonstrates that the FAA expects localities to adopt regulations/laws to handle local situations as they deem necessary. It would have been helpful if the FAA provided more specific guidelines to municipalities so they had a clearer understanding of their role, but they did not.

Should the Board of Selectmen Act Now or take a Wait and See Approach?

Goose Rocks Beach is not the same as Rotary Park or another park in town. The Town has a contract with 65 Beachfront owners that governs the use and regulation of the Beach Premises. As such, the beach is unique legally, we do not believe there is another beach in Maine so administered or restricted. The BUA is a real exchange between the parties and the public is permitted the use and enjoyment of the Beach Premises, but the town accepted defined obligations and additionally must see that the "purposes" of the Ordinance are realized, for as long as the contract is in effect. We have sought the opinions of beach owners in the agreement and all but one believes that drones should be banned (a total of ___ contacted), for the same reasons as those stated by the members of the BAC (see Exhibit 4). We have not undertaken a full survey of beachfront owners but believe if we did the results would be the same as for the group we did sample (most were people who had been active or aware of the development of the BUA/BUO and have maintained a strong positive interest in its success).

The FAA guidance also states that users are not allowed to "intentionally fly over unprotected persons or moving vehicles, and remain at least 25 feet away from individuals and vulnerable property". A common sense reading of that FAA rule would strongly suggest that drones should not be flying over Goose Rocks on a summer day when beachgoers are present. We believe a rule needs to be in place so the activity can be stopped for the coming summer season.

The Town, under its general powers, has long had a dog ordinance that applies to the entire beach, not just the areas referenced in the BUA. That ordinance has a public safety focus and as amended a focus on the mandated protection of plovers and other endangered species. To be consistent the Town should adopt a regulation under the BUO for the coming vacation season and then a more comprehensive ordinance to address the drone issue for Goose Rocks Beach (and any other area of the Town where it is deemed appropriate) and this issue should be a priority.

Exhibit 1

(Correspondence with Amy Tchao)
Good Morning,

Based upon our conversation on Tuesday evening, regarding the GRBAC recommendation to prohibit drones from the beach I have the following information. I discussed the ability of the BOS to adopt a rule regulating drones. Amy gave the question careful consideration and has the following response. The issue is the area we wish to regulate and how police officers may be able to enforce the rule if the drone is over someone's house, flying near the street, on a part of the beach not regulated, etc. Amy's advice is to draft an ordinance.

Laurie Smith
Town Manager
Town of Kennebunkport
(207) 967-1606

----- Original Message -----

Laurie –

We discussed today your question regarding whether the Board of Selectmen (BOS) can adopt regulations prohibiting recreational drones on or over Goose Rocks Beach without the approval of the town's legislative body – the town meeting. Specifically, the question is whether the Beach Use Ordinance (which was adopted by the voters) can serve as adequate enabling authority for the BOS to adopt drone regulations without further town meeting approval. The Beach Use Ordinance (BUO) specifically authorizes the BOS, upon consultation with the Beach Advisory Committee, to adopt regulations implementing the BUO, including but not limited to the following areas of regulation:

- Domestic animals or pets on the Beach
- Protection of the environment
- Storage of watercraft on the Beach
- Use of monies from the Beach Maintenance Fund

- Fires and fire permits on the Beach
- Hours of operation
- Protections (including signage) for beachfront properties that receive heavy beach user traffic.

See BUO, Section IV(D).

In addition, the purpose of the BUO is “to provide for the safety, enjoyment, health and welfare of persons using Goose Rocks Beach pursuant to the Beach Use Agreement.” BUO, Section I (Preamble; Purpose).

Although not entirely free from doubt, I believe it would be reasonable to take the position that drone regulations could be adopted by the BOS without requiring either amendment of the BUO or enactment of a new ordinance approved by the voters if the regulations were crafted narrowly and based on a factual background which pointed to the need for such regulations in order to protect the environment (e.g., interference of drones with nesting sites of piping plovers) and/or to provide for the safety, health and enjoyment of persons using the beach (e.g., taking the position that unregulated recreational drones pose safety risks to beach users). However, assuming the BOS derives its authority to adopt drone regulations without voter approval from the BUO, it is important to note that the BUO in large measure pertains to regulations of the so-called Beach Premises, which is defined to cover only a portion of the beach (those portions in front of lots owned by beachfront owners who signed the Beach Use Agreement), not all of Goose Rocks Beach as a whole.

If the BOS is taking the position that drones should be regulated across the entirety of Goose Rocks Beach, and not just on areas of the beach which comprise the Beach Premises, then my recommendation would be to draft ordinance language addressing all of Goose Rocks Beach and submitting this ordinance to the voters for approval. But if the BOS is content to regulate drones only on the Beach Premises (which raises logistical enforcement questions not addressed here), then proceeding with regulations alone could survive legal scrutiny.

The email above does not address the issue of possible preemption of any local regulation or ordinance provision concerning use of drones by federal law. This is a topic we have already discussed and due to the uncertainty in the law at this point, it would be prudent for the Town to submit any proposed drone regulations or ordinance provisions to the FAA for review and approval prior to local adoption.

I trust this is responsive to your questions. Please don't hesitate to call with any questions you may have.

Best,

Amy

Exhibit 2

Correspondence from Chief Sanford
Here are Craig's thoughts:

In looking at current drone regulations through the FAA and falling back on current instances where we have already dealt with the drones, I think the topic will be a challenge as far as specific enforcement goes given that airspace is the realm of the FAA.

If someone were to call today and complain about a drone flying on the beach we would respond and speak with the complainant and gather details. What was the drone/operator doing? Do we know where the drone is? Do we know who owns the drone?

Options for enforcement:

1. Speak with owner/operator confirm registration with FAA. If there was some type of inappropriate activity with the drone, (trespassing on anothers property, spying on someone, reckless operation, flying over large crowds) we would be able to warn them and document our actions. We could also forward the report to the FAA for some type of enforcement action but when speaking to my FAA counterpart it would most likely be a visit and a warning from them as well.
2. Should the conduct of the operator/drone be an egregious act, I believe we could use current Maine State law specifically 17-A 211 Reckless Conduct which specifically states " A person is guilty of reckless conduct if he creates substantial risk of serious bodily injury to another person."

It was also mentioned by the FAA liaison that many areas of the country are looking at this and the FAA is not sure how or if they will challenge enforcement cases specifically dealing with airspace. There is a site on-line that can be visited to look up no-fly zones which frequently go up for such things as presidential visits. These no-fly zones would be for drones as well.

Craig A. Sanford

Chief of Police
Kennebunkport PD
101 Main St.
Kennebunkport, ME 04046
207-967-2454
csanford@kennebunkportme.gov

Exhibit 3



KNOW *FLY*
BEFORE YOU

- ABOUT
- FLY RESPONSIBLY

Currently, small unmanned aircraft systems (sUAS) may be operated for hobby and recreational purposes under specific safety guidelines as established by Congress. Small UAS flown for recreational purposes are typically known as model aircraft.

Under the Special Rule for Model Aircraft, recreational UAS must be operated in accordance with several requirements, including a community-based set of safety guidelines and within the programming of a nationwide community-based organization such as the Academy of Model Aeronautics (AMA). Operators not operating within the safety program of a community-based organization should follow the FAA's guidance here.

As of Dec. 21, 2015, the Federal Aviation Administration requires all owners of small unmanned aircraft, or drones, weighing between 0.55 and 55 pounds to register online before taking to the skies.

What is recreational use of sUAS?

The recreational use of sUAS is the operation of an unmanned aircraft for personal interests and enjoyment. For example, using a sUAS to take photographs for your own personal use would be considered recreational; using the same device to take photographs or videos for compensation or sale to another individual would be considered a commercial operation. You should check with the FAA for further determination as to what constitutes commercial or other non-hobby, non-recreational sUAS operations.

What are the safety guidelines for sUAS recreational users?

- Follow community-based safety guidelines, as developed by organizations such as the Academy of Model Aeronautics (AMA).
- Fly no higher than 400 feet and remain below any surrounding obstacles when possible.
- Keep your sUAS in eyesight at all times, and use an observer to assist if needed.
- Remain well clear of and do not interfere with manned aircraft operations, and you must see and avoid other aircraft and obstacles at all times.
- Do not intentionally fly over unprotected persons or moving vehicles, and remain at least 25 feet away from individuals and vulnerable property.
- Contact the airport and control tower before flying within five miles of an airport or heliport. (Read about best practices [here](#))
- Do not fly in adverse weather conditions such as in high winds or reduced visibility.
- Do not fly under the influence of alcohol or drugs.
- Ensure the operating environment is safe and that the operator is competent and proficient in the operation of the sUAS.
- Do not fly near or over sensitive infrastructure or property such as power stations, water treatment facilities, correctional facilities, heavily traveled roadways, government facilities, etc.
- Check and follow all local laws and ordinances before flying over private property.
- Do not conduct surveillance or photograph persons in areas where there is an expectation of privacy without the individual's permission (see AMA's privacy policy).

Users of commercial and recreational UAS should be aware that in remote, rural and agricultural areas, manned aircraft, including fixed-wing aircraft and helicopters, may be operating very close to ground level. Pilots conducting agricultural, firefighting, law enforcement, emergency medical, wildlife survey operations and a variety of other services

all legally and routinely work in low-level airspace. Operators controlling UAS in these areas should maintain situational awareness, give way to, and remain a safe distance from these low-level, manned airplanes and helicopters.

For more safety information, please download the Know Before You Fly brochure [here](#).

Waiting on the FAA: Drone regulations likely, in 2016-17

In the meantime, legal experts say, local and state officials should use care before enacting laws of their own, or deciding to purchase a drone for official use.

By Eric Conrad, Director of

Communication & Educational Services, MMA

If you are a leader in municipal life, and you haven't encountered an issue with an "unmanned aerial vehicle" – otherwise known as a drone – rest assured, you probably will.

It may come in the form of a request from a fire-rescue or police department employee who wants to research whether an aerial drone could help in that line of work.

It may come from irritated lakeside or ocean front residents, where tranquility is a thing of the past, now that the neighbors bought a drone to use as a toy.

Or it may come from a summer-season starlet – Maine has more of them than many people realize, each summer – whose privacy is threatened by a nearby photographer, whose drone has become a most valuable "tool."

The hardest part about dealing with any of these issues is that the Federal Aviation Administration, which was tasked in 2012 to develop regulations for drone use, has not done so to date, at least not in a thorough manner.

One of the most important things to know about drones in the United States is that there are a lot of them. An estimated 1 million drones have been sold to date, and 350,000 have been registered with the FAA. By law, any drone weighing more than 0.55 pounds must be registered, no matter what its intended use is.

"A lot of people think these will be good for kids," said Jason Levasseur, a drone enthusiast, videographer and consultant to the Maine-based law firm, Bernstein Shur. "The first thing kids do with drones is fly them around and look in people's windows, not thinking about the legality of all that."

Here's some of what is known about drones at present:

- The FAA has retained primary regulatory authority over them. The idea here is that drones share airspace with airplanes and helicopters, thus regulating drones is not a local or state issue.
- For recreational drone owners, regulations are few beyond registration. However, drones must be flown only in the operator's line of sight, for safety reasons.
- Drones must be flown below 400 feet in and remain clear of surrounding obstacles.
- Drones cannot be flown within five miles of an airport, unless the operator contacts the airport and control tower before flying. This includes major airports such as in Bangor and Portland, and the smaller airports scattered throughout Maine.
- For municipal departments considering using drones for professional reasons, the regulations are steeper. For example, currently – and this very well may change – an airplane pilot's license is required by the FAA.

To date, at least 20 state and municipal regulations have been adopted, despite the FAA's assertion that it has primary regulatory authority, according to Kelsey Wilcox Libby, an attorney with Bernstein Shur.

Maine law on the books

Maine is among them, but not in the way you might think.

Maine's law prevents police and other law-enforcement agencies from using aerial drones for surveillance and evidence gathering, without a search warrant.

Beyond that, information about drone use and regulation is coming out in drips and drabs.

On April 6, the FAA announced that it is considering allowing small drones – weighing less than 0.55 pounds – to fly over people and crowds without restriction, under the belief that small, lightweight drones are unlikely to cause injury should they hit someone. Larger drones, the FAA advised, also are likely to be permitted to fly over people, so long as they stay at least 20 feet above them and 10 feet away on either side.

That may not sit well with your average, non-drone enthusiast, citizen.

The Academy of Model Aeronautics said it fears that "allowing unmanned aircraft to operate over and within close proximity to people will heighten the anxiety in a society that is already hypersensitive to the introduction of 'drones' in our communities."

Here are some other things that experts believe the FAA *may* require or recommend, when its formal regulations are promulgated, which is expected to occur this year or in 2017:

- Operators must be 13 years of age or older. (The final age figure could be as high as 17 years of age, however.)

- Drone use will be permitted only during daylight hours.
- Drones will have to carry registration numbers prominently, as most airplanes and boats already do.
- Penalties will be developed for people who violate the FAA's regulations.

Phil Saucier, another attorney with Bernstein Shur and chair of its Municipal and Governmental Services Group, said legal experts, in general, have empathy for state and local officials, regarding drone use.

"These are the people who get the complaints," Saucier said. "The FAA regulates this, but they are not on the ground when people fly these by other people's windows."

The legal issues surrounding drones get dicey in a hurry, as major, Constitutional issues arise over privacy rights, freedom of speech issues, law enforcement procedures and due process rights.

For example, members of the news media have for decades used helicopters to cover news stories. We've all seen that kind of footage, as television stations have covered events from major wildfires to the O.J. Simpson Bronco chase. The federal government does not have the right to tell the media it cannot fly over scenes where news are unfolding. And, the same right to news gathering pertains to aerial drones.

But where does that line end and a celebrity's right to relax in his or her backyard, in privacy, end?

With questions such as that, even when the FAA releases its regulations, one can see how Congress, state legislatures, municipal governing boards and ultimately the courts will be asked to weigh in, experts say.

Positive uses

Lest we get "all negative" on drones, there can be – and there have been – some wonderful examples of how they are, and can be, used positively.

For example, search and rescue operations can benefit from aerial drones that are equipped with cameras (most are) and infrared heat-sensors, which can detect the body heat of a lost or injured hiker or animal.

Many communities and colleges are using drones as marketing tools. The visual images from overhead drones can be strikingly beautiful as they fly over a community on a sunny day, during peak foliage season. Put a video like that on the local Chamber of Commerce website, and voila!

The same is true for colleges aiming to lure students and coax alumni into opening their wallets. Virtual tours of college campuses have been used on university websites for years. But now, overhead video can enhance that, plus give viewers a sense of how large or small a campus is, and how its buildings are laid out.

Levasseur, the Maine-based drone consultant, said there are some built-in tools that people who worry about drones should know. For example, many of them come with automatic “return to operator” devices, if the signal from the ground to the airborne drone is disrupted.

However, “unexpected things will happen,” Levasseur warned. He primarily flies his drones in areas where the public is not, because he doesn’t want to attract attention – or be distracted. That doesn’t mean things always go well.

“Crashes will happen,” he said, citing wind, loss of GPS signal and a drone leaving the operator’s line of sight as chief reasons why.

Finally, there is the inevitable property owners’ question about what can and cannot be done if someone flies a drone over your property: “Can I shoot it?”

The answer is: Probably not. In the old days, common law held that people owned not just their homes and land, but the sky above that property up to the heavens. But then airplanes and helicopters came along, as well as the FAA, so airspace became public, subject to federal regulation.

Having said that, there was a case in Kentucky where a landowner shot down a drone over his property because he felt the drone operator was spying on and harassing his daughters. He was charged, and a Kentucky judge dismissed the case against him.

FAA WEBSITE

For more information about aerial drones, visit the FAA website at:
<http://federaldroneregistration.com/>

LOCAL REGULATION

Although formal FAA regulations have not been adopted, here are some areas where legal experts believe local and state regulation of aerial drones will be permitted:

- The areas of land use and zoning.
- Prohibitions on using drones for voyeurism.
- Requiring search warrants for police surveillance.
- Prohibiting the surveillance of individuals while they are hunting and fishing.
- Prohibiting hunters and fishermen from using drones to more effectively find game and fish.
- Outlawing the practice of attaching firearms or weapons to aerial drones.

(Sources: FAA Fact Sheet; Bernstein Shur)

10

MEMORANDUM

To: Board of Selectmen
Fr: Laurie Smith, Town Manager
Re: Wind Turbine
Dt: May 9, 2016

In preparation for your discussion regarding the future of the wind turbine I have reviewed the original goals, the data collected reporting performance and past reports from the conservation commission.

In 2009 the Town of Kennebunkport applied for a grant under the Community Demonstration Projects through Maine's Renewable Resources fund. Originally the town requested two wind turbines to be placed on the Police Department lot off Route 9. As outlined in the application the goals of the project were as follows:

1. The turbines would produce at least 80% of anticipated energy production as specified from manufacturer's specifications. The goal would be measured by the data collected by the software system and the analysis of the electrical utility bills.
2. The turbine would serve as a community demonstration project. This would be measured by the onsite visits from schools as well as a visitor's log kept on site.
3. The project would reduce energy usage at the police station through education and energy efficiency steps. The Conservation Commission would provide education materials on improved lighting, reduction in electrical usage, which would be measured through decreased monthly electrical usage. The assumptions used at the time were that the wind turbine would produce about 5,400 kWh per year, with an estimated savings of \$754. The project would also reduce the amount of carbon dioxide produced by 5508 pounds¹.

The Town was awarded the grant which required a 20% match from the Town. Ultimately, only one wind turbine was purchased and installed at the Police Department site. The reduction in the number of turbines would also impact the expected savings in kWh and carbon dioxide.

¹Formula provided by Skystream – 1.02 pounds of carbon dioxide prevented per kWh of green energy.

The turbine chosen was a Skystream 3.7, with a 60' tower, purchased from All Seasons Home Improvement Company for \$25,082. It was installed in the spring of 2011 and became operational in May.

In September of 2012, after one year in operation, the Conservation Commission and Town Manager reported on the performance of the wind turbine. It was noted, at that time, that there were concerns regarding the reliability of the data provided by the Skystream software as there were inconsistencies between the data and observed conditions. The report especially noted September 18, 2012, which was noted as a high wind day, with sustained winds of 10 mph or higher for 13 hours. However; when the data was downloaded the system reported energy production -0.9 kWh.

The Commission also reported that Kennebunkport Consolidated School students would be analyzing the energy produced by the wind turbine and had received a full curriculum kit for work with the wind turbine.

In June of 2015 the Conservation Commission again reported on the performance of the wind turbine. There still appeared to be difficulties with the software and the reliability of the data. The Conservation Commission had worked with SkyStream to resolve the issue; however, the manufacturer went out of business and hence support was no longer available.

Earlier this year I asked All Seasons Home Improvement to provide us with data that they have collected regarding the turbine's performance. Attached to this memo is a report they provided showing performance from 1/1/2015 through 12/31/2015. The graphic representation of generation shows heavy activity in the winter months, with little activity in the summer months. This pattern is in accordance with the projected activity levels prior to installation. The Skyview software is reporting that 509.5 kWh were generated in calendar year 2015, and 2,373.3 kWh were generated since the turbine was installed. If this information is accurate then we are generating about 19% of the annual goal kWh (2,700). 509.5 kWh annually equate to 611 pounds of carbon dioxide or \$59.94 in annually cost savings (509.5 kWh x \$.11764).

One of the other pieces of data that we could examine to determine the effectiveness of the wind turbine is the actual kWh usage at the Police Department. Prior to the wind turbine, the department used a little over 57,000 kWh in 2010. The turbine was installed in the spring of 2011; however, the usage increased. Since then the annual usage has hovered between 52,000 and 53,000 kWhr, or a decrease of about 5,000 kWh.

	2010	2011	2012	2013	204	2015
Police KW/h usage	57,280	59,097	52,115	51,939	51,432	52,930

Can this decrease be attributed to the wind turbine or are there other impacts to consider? The grant application explained that other energy efficiencies would also be installed, including improved lighting. Since 2010, the Police Department has installed some new exterior LED lighting; however, interior lighting has remained the same. If even half of this reduction in kWh was attributable to the wind turbine it would be an annual savings of 2,500 kWh or \$294, which equates to 3,000 pounds in carbon dioxide.

The question before the Board of Selectmen is whether the wind turbine project has met our goals. The ability to analyze the data appropriately has been hindered by the absence of the company that manufactured the turbine and developed the analytical software. Another consideration is the impact on the neighbors. During the Planning Board process the Town had conducted a noise level study and reported that the abutters are unlikely to hear the turbine over other ambient noise created by wind. I understand that the neighbors have experienced levels of noise that are concerning to them and on occasions when the noise has become unacceptable the Town has locked the blades in place. Of course, locking the blades has a negative impact on the generation of power. The Chief of Police, myself, and the Conservation Commission will be present at the meeting to answers any questions.



Turbine Status

Generating

Ready

Waiting

Fault

Communication Status

USB

Interface

Skystream

Inverter

Data

Signal Strength

-69 dBm

Overview

Quick Diagnostics

Turbine Setup

Power & RPM

Data Logging

Advanced Diagnostics

Select Turbine SKY37A 2010-0158

SKYSTREAM

kbunk pd

Overview

Energy Production

09:48 AM Mar-28-2016

Get

Start Date 01/01/2016

End Date 03/28/2016

Graph Now

Export Graphed Data To File



Power (W)



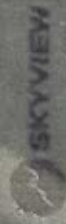
RPM

Cumulative Performance

Select Data Range	204.4 KWhr
Date Range Average	2.3 KWhr
Today 50 Per	-0.6 KWhr
Since Installed	8373.3 KWhr

Footprint

Since installed, the Skystream has prevented the release of 2420.8 lbs/1098.1 kg of CO₂ compared with energy from coal.



- Turbine Status:
- Generating
 - Ready
 - Waiting
 - Fault

Communication Status

- USB
- Interface
- Skystream
- Driver
- Data

Signal Strength

-50 dBm

Overview

Quick Diagnostics

Turbine Setup

Power & RPM

Data Logging

Advanced Diagnostics

Select Turbine SKY37A_2010-0156

SKYSTREAM®

kbunk.pd

Overview

Energy Production

Start Date 01/01/2015

End Date 12/30/2015

09:44 AM Mar-28-2016

Set

Graph Now

Export Graphed Data To File



11/19/2014 1/18/2015 3/19/2015 5/10/2015 7/17/2015 9/15/2015 11/14/2015 1/13/2016

Days

Power (w)

RPM

Footprint

Since installed this Skystream has prevented the release of

2400 8.65e1055.1 kg of CO₂ conserved with every footfall

Cumulative Performance

Selected Date Range	5/29/5 kWh
Date Range Average	1.4 kWh
Today So Far	-0.0 kWh
Since Installed	2373.3 kWh

THE SPACE ABOVE IS RESERVED FOR PURPOSES OF RECORDATION

**KENNEBUNKPORT PLANNING BOARD
FINDINGS OF FACT AND DECISION**

**APPLICATION OF THE TOWN OF KENNEBUNKPORT
Kennebunkport, ME**

**To install a 60' high, 3-blade, 12' diameter, wind turbine at the Public
Safety Building on Main Street as a demonstration project.**

Following a Site Plan Review pursuant to the Kennebunkport Land Use Ordinance and a Public Hearing held on November 3, 2010, the Kennebunkport Planning Board makes the following Findings of Fact and Conclusions, and renders the following Decision subject to the conditions enumerated below:

FINDINGS OF FACT ARE AS FOLLOWS:

1. The proposed wind turbine will be located in the parking lot of the Public Safety building on Main Street, which is the property of The Town of Kennebunkport, which has a mailing address of 6 Elm Street, Kennebunkport, ME 04046.
2. The property has a street address of 101 Main Street, Kennebunkport, ME and is located in the Cape Porpoise West Zone and is identified as Map 22, Block 3, Lot 13 on the Town Assessor's map.
3. The Town is represented by Larry Mead, Town manager, and Sarah Lachance, Chair of the Kennebunkport Conservation Commission.
4. The application was dated August 6, 2010.
5. The Applicant has demonstrated a legal interest in the property by providing a copy of a Deed recorded in the York County Registry of Deeds, book 3270 pages 169 -171 and dated April 5, 1984.
6. The proposed project was approved as a demonstration project for the production of renewable energy by the State of Maine Public Utilities Commission and partially funded by Efficiency Maine. The application to the PUC dated September 29, 2009 is included as part of this application. The Town of Kennebunkport Board of Selectmen and the Conservation Commission also approved the project. Letters of support were provided from the Kennebunkport Conservation Trust and Consolidated School

510-777-01046
TOWN OF KENNEBUNKPORT
REGISTRY OF DEEDS

7. The Applicant proposes to construct a 12' diameter Skystream wind turbine on a 60' tower to be placed on an existing island in the middle of the parking lot of the Public Safety building. The turbine will generate electricity for use mainly at that building.
8. The closest abutter is approximately 250 feet from the site of the proposed turbine. The closest property line is 120 feet from the site.
9. The Applicant has requested submission waivers from the requirements of the Kennebunkport Land Use Ordinance Article 10.6 C. 7, 10, 11, 12, 13, and 14 as not being applicable.
10. Given the municipal status of the applicant, no performance bond is required or appropriate.
11. The Board received a letter from Jim Appleby, Personal Aide to President George H. W. Bush, dated August 31, 2010 indicating that the wind turbine installed on Walker Point (the same model as the proposed turbine) indicating that the noise levels produced have not been an issue.
12. The Applicant provided the results of a noise level study (dated October 1, 2010) conducted at the proposed site by Charles F. Wallace, President of Resource Systems Engineering of Brunswick, Maine. The study predicted that the noise levels from the proposed turbine will generally comply with the Town's Land Use Ordinance Article 6.16 relating to sound pressure levels. The study also concluded that abutters are unlikely to hear the turbine over other ambient noise created by wind. Mr. Wallace also noted for the Board that noise from the proposed turbine, because of its small size and high rotation speed, would be very different from that produced by very large industrial size turbines (such as those reported as causing problems on Vinalhaven): i.e., the noise from "residential" size turbines is both lower and less intrusive than that produced from turbines in a typical commercial application. .
13. The Applicant has also stated that if noise were ever to be a problem for abutters at particular times, the turbine would be locked from spinning. The Applicant also agreed to monitor and report to the public the actual noise levels generated from time to time.
14. Pursuant to the requirements of Article 10.10.A of the Land Use Ordinance ("Guidelines for Decisions") the Planning Board shall approve a Site Plan application unless it makes a **negative** ruling on one or more of the following identified findings which would otherwise compel denial:
 - a. The proposed use meets the definition or specific requirements set forth in the Land Use Ordinance and will be in compliance with applicable state or federal laws.
Finding: Yes ☒ No ☐
 - b. The proposed use will not create fire safety hazards and will provide adequate access to the site, or to the buildings on the site, for emergency vehicles.
Finding: Yes ☒ No ☐

d. The provisions for buffers and on-site landscaping provide for adequate protection to neighboring properties from detrimental features of the development.

Finding: Yes ☐ No ☐ NA

e. The proposed use will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, glare or other cause.

Finding: Yes X ☒ No ☐

f. The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets will not create hazards to safety.

Finding: Yes X ☒ No ☐

g. The proposed use will not have a significant detrimental effect on the value of adjacent properties (nor has a significant detrimental effect, which could be avoided by reasonable modification of the plan).

Finding: Yes X ☒ No ☐

h. The design of the site will not result in significant flood hazards or flood damage and is in conformance with applicable flood hazard protection requirements.

Finding: Yes ☐ No ☐ NA

i. Adequate provision has been made for disposal of wastewater or solid waste and for the prevention of ground or surface water contamination.

Finding: Yes ☐ No ☐ NA

j. Adequate provision has been made to control erosion or sedimentation.

Finding: Yes ☐ No ☐ NA

k. Adequate provision has been made to handle storm water run-off or other drainage problems on the site.

Finding: Yes ☐ No ☐ NA

l. The proposed water supply will meet the demands of the proposed use or for fire protection purposes.

Finding: Yes ☐ No ☐ NA

m. Adequate provision has been made for the transportation, storage and disposal of hazardous substances and materials as defined by state law.

Finding: Yes ☐ No ☐ NA

n. The proposed use will not have an adverse impact on significant scenic vistas or on significant wildlife habitat (nor will have such an impact that could be avoided by reasonable modification of the plan).

Finding: Yes X ☒ No ☐

o. The proposed use will not cause unreasonable highway or public road congestion.
Finding: Yes _____ No _____ NA

p. Existing off-site ways and traffic facilities can safely and conveniently accommodate the increased traffic generated by the development as far away from the development as the effects of the development can be traced with reasonable accuracy.

Finding: Yes _____ No _____ NA

Any negative finding by the Board means that the Application has been denied.

13. The application is otherwise complete.

CONCLUSIONS:

Articles 10.10.A of the Land Use Ordinance mandates that the Planning Board shall approve a Site Plan application unless it makes one or more identified findings that would otherwise compel denial, and as noted above, the Board makes no such findings.

DECISION:

The Site Plan Application identified above is hereby: APPROVED.

CONDITIONS OF APPROVAL, IF ANY, PURSUANT TO ARTICLE 10.11 AND 10.12.E:

1. The Applicant must record a copy of this decision and provide proof of such recordation, in the form of a copy thereof attested by the Register of Deeds, before any permit(s) may issue or before any construction activity may commence.
2. The Applicant will measure the noise levels generated by the turbine from time to time and report those results to the public.
3. The Applicant will also comply with all Town of Kennebunkport Ordinances.

Dated: November 17, 2010

KENNEBUNKPORT PLANNING BOARD

By: _____

David R. Kling, Chair

By: _____

Kendall Burford, Vice Chair

By: _____

Gordon Ayer

By: 
Leo Famolare

By: _____
John Hathaway

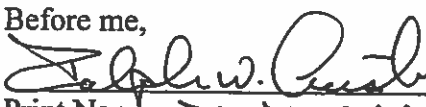
By: 
Greg Reid

By: 
Peter Fellenz

STATE OF MAINE
County of York, ss

Date: 11-17-2010

Personally appeared before me the above-named DAVID R. KLING, CHAIR of the Kennebunkport Planning Board and acknowledged the foregoing to be his free act and deed and the free act and deed of said Board.

Before me,

Print Name: RALPH W. AUSTIN
~~Notary Public~~ / Attorney at Law, Bar # 1156

End of Document

September 27, 2012

TO: Members of the Kennebunkport Planning Board

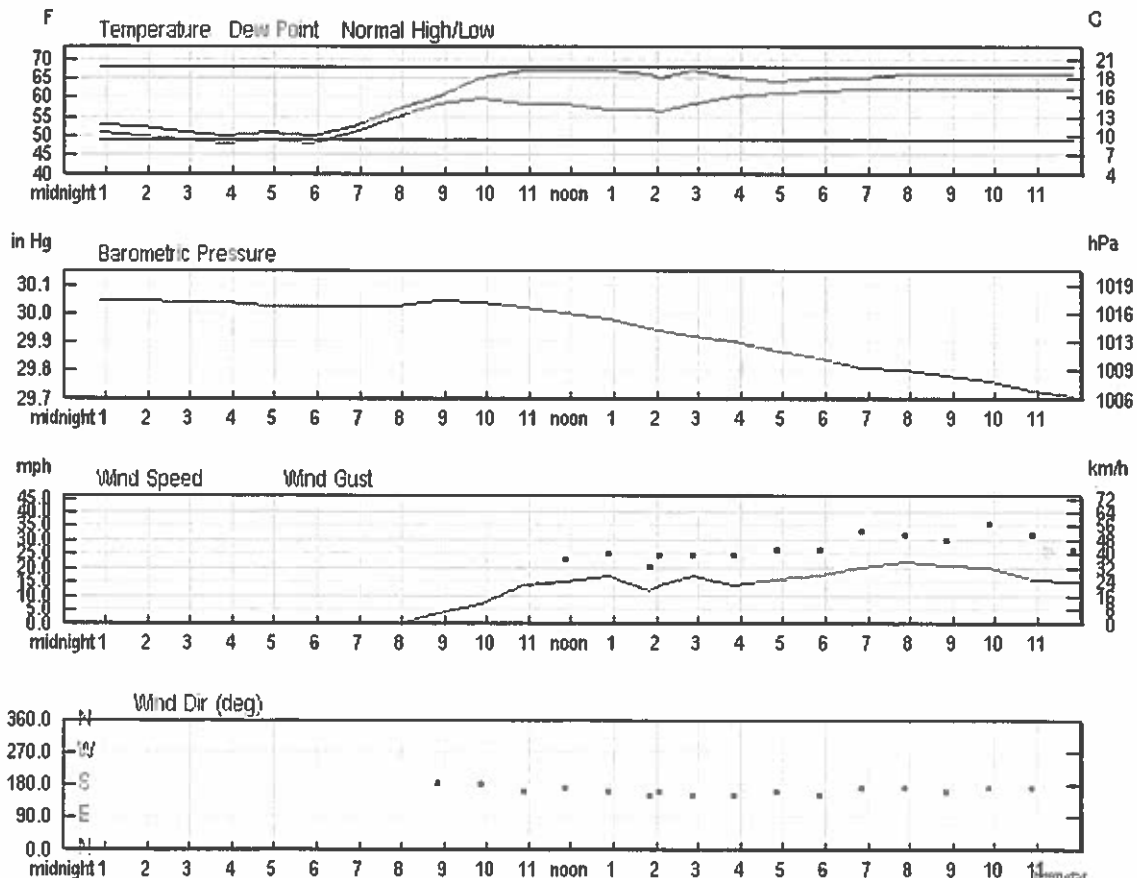
FROM: Members of the Kennebunkport Conservation Commission

SUBJECT: Police Station Wind Turbine Update

The Skystream 3.7 installed at the Kennebunkport Police Station became operational in late May of 2011. As expected, the summer months have proven to be the lower producing months, and the other seasons generate more of the power.

Looking at the data provided by both the software from the Skystream, as well as reviewing the CMP bills at the police station, it is evident that the wind turbine is producing energy from a non-polluting renewable source, although how much energy is not exactly clear. Sarah Lachance, the Chair for the Kennebunkport Conservation Commission, has been carefully monitoring the system. She noticed that the data reflected in the software did not seem to correlate with the wind speeds of certain days. She called All Seasons, the contractor that installed the equipment, and had them come down to run some diagnostics. At their first site visit, using only a visual inspection and a cursory glance at the data, they found "no problems" with the system.

However, Sarah remained skeptical of this finding and continued to closely monitor the system. On September 18, 2012, she made repeated visits to the site as it was a very high wind day. See below the weather data for this date.



With sustained winds of 10 m.p.h. or higher for 13 hours, this day should have been one of our best producing energy days. When the data was downloaded at 11a.m. on September 19th, the software system was reporting energy production of -.09 kwh produced for September 18th. It also reported 2.74 kwh of energy produced for September 19th, in just the first 11 hours of that day.

This information buttressed Sarah's conviction that there is something going wrong with the gathering of data by the software. She called the Skystream manufacturer directly and is working with them directly to find the solution. She also put a call into All Seasons, shared the newest information, and they agreed a problem was present. They plan to revisit the site again on a windy day.

To further look at how much "missed energy" is most likely going unaccounted for, the Kennebunkport Conservation Commission asked to review the CMP bills for the police station for the 12 months of 2010, 2011, and year-to-date for 2012. Please see attached spreadsheet. This data shows some very promising results in regards to free, clean energy being produced as well as dollars saved.

In 2010, the police station used a total of 61,922 kilowatts of energy. This costs the town \$8,825.22 in electrical costs. In 2011, with the wind turbine on line from the end of May on, the town used 59,097 kilowatts of energy. This costs the town \$8221.06 resulting in a savings of \$604.16. Remember this only reflects the first seven months of the wind turbine operating.

So, we must also compare the first five months of 2012 to the first five months of 2011 to get the FULL picture. In January through May of 2011, the station used 22,974 kwh of energy. In January through May of 2012, the station used 19,178. This is a savings of 3,796 kilowatts and \$709.77 in electrical savings.

Putting these two figures together to look at a full year of wind energy production, there is a savings of 6,621 kilowatts of energy and \$1313.93 in electrical costs.

However, the Kennebunkport Conservation Commission does not believe that this entire savings is due to the wind turbine. As mentioned earlier, there appears to be some significant problems related to the recording of energy data as the numbers clearly don't coincide with high wind events. However, looking at this software data, we can make some very basic assumptions about the wind energy being produced at the police station. Our best producing day recorded, was that of 14.25 kilowatts. We know that some high wind days didn't record accurately, like September 18th 2012 and August 28th 2011, Hurricane Irene, which only reported from the software of having produced a meager .05 kilowatts of energy. However, even knowing there are some troubles with the software, we also know that the wind does not blow every day and it certainly doesn't average a daily production of 14.25. So, just for talking purposes, if we were to guess an average of 8 kilowatts a day, the turbine should have produced only 2920 kilowatts, not the 6621 that were "saved" or "produced" according to the CMP comparison.

So, this creates a lot of gray in being able to report accurately on the savings of the wind turbine. Clearly, based on the CMP records, there have been SIGNIFICANT savings on kilowatts and dollars. Some of that is owed to the wind turbine, but some is owed to something else, conservation. Clearly, the police station has made some changes to more energy efficient computers, lights, etc, and perhaps personnel are also working harder to use less energy. These combined efforts have resulted in a savings of \$1314 dollars.

The Kennebunkport Conservation Commission also designed and installed an educational display at the base of the wind turbine. All of our residents and out of state visitors, whether they are dropping off bottles or picking up a beach permit, were educated about wind energy and learned that Kennebunkport cares about protecting its environment and finding ways to lessen its dependency on foreign fossil fuels.

Now that the wind turbine has been operational for a year, the students are going to be taking a closer look at the wind turbine, the energy it produces, and how it all works. The Kennebunkport Conservation Commission received an anonymous donation in late Spring of 2012 for a full curriculum kit for elementary aged students on renewable energy from the National Energy Education Development Project. The kit is full of hands on experiments for kids of all grades at the school as well as already designed lesson plans for the teachers to make it easy to implement.

Mr. Dennis Bodwell and Mrs. Jennifer Humphrey, the 5th grade teachers, will be the first to use the kit this fall as their students work on their "energy" studies. Mrs. Humphrey is also the head of the Go Green committee.

Coordinating efforts with the "Trust in the Children" program field trips through the Kennebunkport Conservation Trust, students will be making site visits to the wind turbine this year as well.

Preliminary discussions have also begun with Graves Library to find a space at the library to educate visitors about the wind turbine and wind energy in general. We are also reaching out to the Chamber of Commerce to see if we can't get on the map as a point of interest for tourists.

It should also be noted that no noise complaints have been filed by neighbors since the wind turbine became operational. Two staff members were also interviewed about the noise production. Both said that there is absolutely no noise issue with the turbine from inside their building and the noise outside is marginal.

The Conservation Commission will continue to work with both Skystream Inc. and All Seasons to adjust the data monitoring system so that it is accurately recording the energy production of the wind turbine.

Please feel free to contact Sarah Lachance, Chair of the Conservation Commission, with any questions or suggestions, sarah@campaignearth.org, 459-0419

Wind Turbine Data

5-26-2011 to 5-31-2011	2.12
6-1-2011 to 6-15-2011	12.39
6-15-2011 to 6-30-2011	1.67
7-1-2011 to 7-15-2011	6.06
7-16-2011 to 7-31-2011	7.46
8-1-2011 to 8-15-2011	2.26
8-16-2011 to 8-31-2011	14.1
9-1-2011 to 9-15-2011	3.71
9-16-2011 to 9-30-2011	1.03
10-1-2011 to 10-15-2011	4.99
10-16-2011 to 10-31-2011	23.04
11-1-2011 to 11-15-2011	8.26
11-16-2011 to 11-30-2011	17.6
12-1-2011 TO 12-15-2011	21.81
12-16-2011 TO 12-31-2011	50.6
1-1-2012 to 1-15-2011	26.2
1-16-2011 to 1-31-2011	42.79
2-1-2012 to 2-15-2012	18.12
2-16-2012 to 2-29-2012	41.68
3-1-2012 to 3-15-2012	37.2
3-16-2012 to 3-31-2012	22.46
4-1-2012 to 4-15-2012	21.24
4-16-2012 to 4-30-2012	60.64
5-1-2012 to 5-15-2012	13.5
5-16-2012 to 5-30-2012	2.46

first year total	463.39
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Wind Turbine Update

June 25, 2015

I did 2 site visits recently after a complaint from a neighbor regarding the noise being louder. From the visits, I found no notable difference and did walk along the road to nearest neighbors' driveway. AT this point, you have to really listen to be able to pick out the turbine noise from other noises in the fast moving air. The employees at the police station did not notices any significant change in recent weeks either.

However, I do plan to return with a sound level meter on a high wind day.

There continues to be the issue with the software collection the electricity production versus what we see the results to be via the CMP bills.

As reported in the Fall of 2012, it looks as if the software system has a problem. I tried to work with SkyStream for several months to get this assessed, but after months of not getting any real support, the manufacturer went out of business.

Looking at the CMP data for the last 5 years:

2010: 57,280

2011: 59,097

2012: 52,115. \$700 estimated annual savings

2013: 51,939 \$727 estimated annual savings

2014: 51,432 \$788 estimated annual savings

The wind turbine was installed at the end of May 2011. No efficiency improvements were made to the building since that time.

Unfortunately, with the software not working properly, it's impossible to know if all of those savings come from the wind turbine. But, the savings are significant enough without any efficiency upgrades to safely assume that the turbine is making a notable difference.

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MEMORANDUM

To: Laurie Smith, Town Manager
Fr: Craig Sanford, Chief of Police
Re: Personnel Locker Purchase
Dt: May 5, 2016

The new addition and remodeling project will soon start at the police station and the need to order personnel lockers and have them available on-site to install as the construction schedule develops will be important. I must admit I have spent a significant amount of time in trying to get the town the best price while keeping quality in mind.

Tiffin Metal Products is a common supplier for police personnel locker systems and has the ability to give us GSA pricing. I have enclosed a quote from a local distributor, Systematics, for \$ 19,728.50 and another quote from Tiffin direct for \$ 12,715.00. I am recommending we use the Tiffin quote saving on pricing of the actual lockers and shipping costs.



Tiffin Metal Products
450 Wall Street, Tiffin, OH 44883
Phone: (800) 537-0983 Fax: (419) 447-8512
www.tiffinmetal.com

Quotation

BH4192016A

Project: Airflow Lockers GSA Contract # GS-27F-0040X

Submitted To:
Kennebunkport ME PD
Craig Sanford
Kennebunkport, ME

Quoted By: Brett Hossler
Phone: 8005370983
Email: bhossler@tiffinmetal.com
Date Created: 02/08/2016
Expiration: 08/31/2016

F.O.B. 44883		Ship Method: LTL		Terms:		
Line #	Part Number	Product	Description	Qty	UOM	Unit Price
1	WBDA243618AA	Wardrobe Base Dwr 24Wx36Dx18H	Base Drawer / Price includes bench	12	Ea.	\$335.00
2	ALK24246601KNAA	Airflow Locker 24 x 24 x 66		12	Ea.	\$570.00
Freight Charge						\$1,855.00
Total Price						\$12,715.00

Notes: Quote is for:

- 12- 24x24x66 Airflow Lockers
- 12- 24x36x18 base drawer with bench seat
- Locking and Color TBD

GSA Contract # GS-27F-0040X

Accepted By: _____ Date: _____

LIMITED WARRANTY

Tiffin Metal Products, Co. (TMP) warrants the good quality of the materials, workmanship and that its products are merchantable and fit for their intended purpose. This Limited Warranty for the Sentinel® Locker Line expires of five (5) years after the date of product purchase. TMP does not provide any other express or implied warranties of any kind or nature. There are no warranties which extend beyond the description on the face of this Limited Warranty. The terms, conditions and operations of this Limited Warranty are available upon request prior to purchase.

Thursday, April 28, 2016

**SYSTEMATICS**

Redefining Space and Asset Management

Prepared for:

Attn: Chief Sanford
 Kennebunkport Police Department
 101 Main Street
 Kennebunkport, ME 04046

Project Scope:

Airflow Locker - Duty Lockers

Corporate Office
 238 C Cherry Street
 Hills Farm Industrial Park
 Shrewsbury, MA 01545
 T: 508-366-1306 F: 508-366-1307

Salesperson	Project #	Quote Date	Terms of Sale	FOB Point	Payment Terms
Dan Clifford 508-399-3518	54584 R2	04/21/16	Per contract	Destination	Due Upon Receipt of Invoice
QTY	PRODUCT	DESCRIPTION		UNIT PRICE	TOTAL AMOUNT
		GSA CONTRACT - GS-07F-5780R			
		Airflow Personnel Duty Locker - 24"W x 24"D x 66"H, Single door - per specifications by Wright-Ryan, post bid addendum 1 dated 4/20/16			
		• Garment Rail-Designed with separations to keep clothing apart			
		• Top Storage Shelf - full depth, full width			
		• Lockable security compartment for added level of security.			
		• Double Hook-Attaches to lockable security compartment for hanging storage.			
		• Side shelves: 8"H x 7"W x 13.9"D			
		• Lock options - Combo, Keyed, or Hasp			
		• Side hooks on each side			
		• Peg board hooks on door back			
15		Airflow Locker - 24"x24"x66"		\$730.00	\$10,950.00
15		Wardrobe Base Drawer - 24"W x36"D x18"H, mechanical lock, base for bench		\$280.00	\$4,200.00
15		Standard Maple Finish bench		\$37.50	\$562.50
2		End panels		\$148.00	\$296.00
1		Installation Manager for one day to train contractors on site (daily cost)		\$840.00	\$840.00
1		Freight Charges direct to customer		\$2,880.00	\$2,880.00
		PLEASE MAKE PURCHASE ORDER:			
		Tiffin Metal Products			
		C/O Systematics			
		450 Wall Street			
		Tiffin, OH 44883			
		Please provide the following information:			
		Color:			
		Locking Mechanism (keyed, combo, or hasp):			
		Numbering Sequence:			
		Optional - Systematics Installation and redelivery available upon request		\$6,710.00	
				ME State Sales Tax	exempt
				GRAND TOTAL:	\$19,728.50

Comments: Prices valid for 120 days and assumes free and clear access to loading dock and freight elevator, as well as installation area
 Any questions about this quotation, please call 508-366-1306.

Confidential Budget Proposal Only: This proposal has been prepared for budget purposes only. Final purchase price may vary based on final specifications and project requirements. Information contained herein is proprietary information which is protected from release under the provisions of the freedom of information act. SYSTEMATICS does not authorize release of this information to any party outside of the intended recipient or the agent responsible for reviewing.

Select Payment Option: () 1 Credit Card () 2 Check () 3 Purchase Order to be issued separately

1. CREDIT CARD INFORMATION:

Card #: _____
 Signature: _____

Expiration: _____
 Cardholder: _____

Approved by: _____
 Accepted: _____
 Printed Name: _____
 Date: _____

SYSTEMATICS Sales Rep: _____
 Printed Name: _____
 Date: _____

AIRFLOW® WARDROBE LOCKER

Built to meet the rigorous demands of our public safety professionals. Boasting heavy-duty construction and unique design, the Airflow® Locker is in a class all its own.

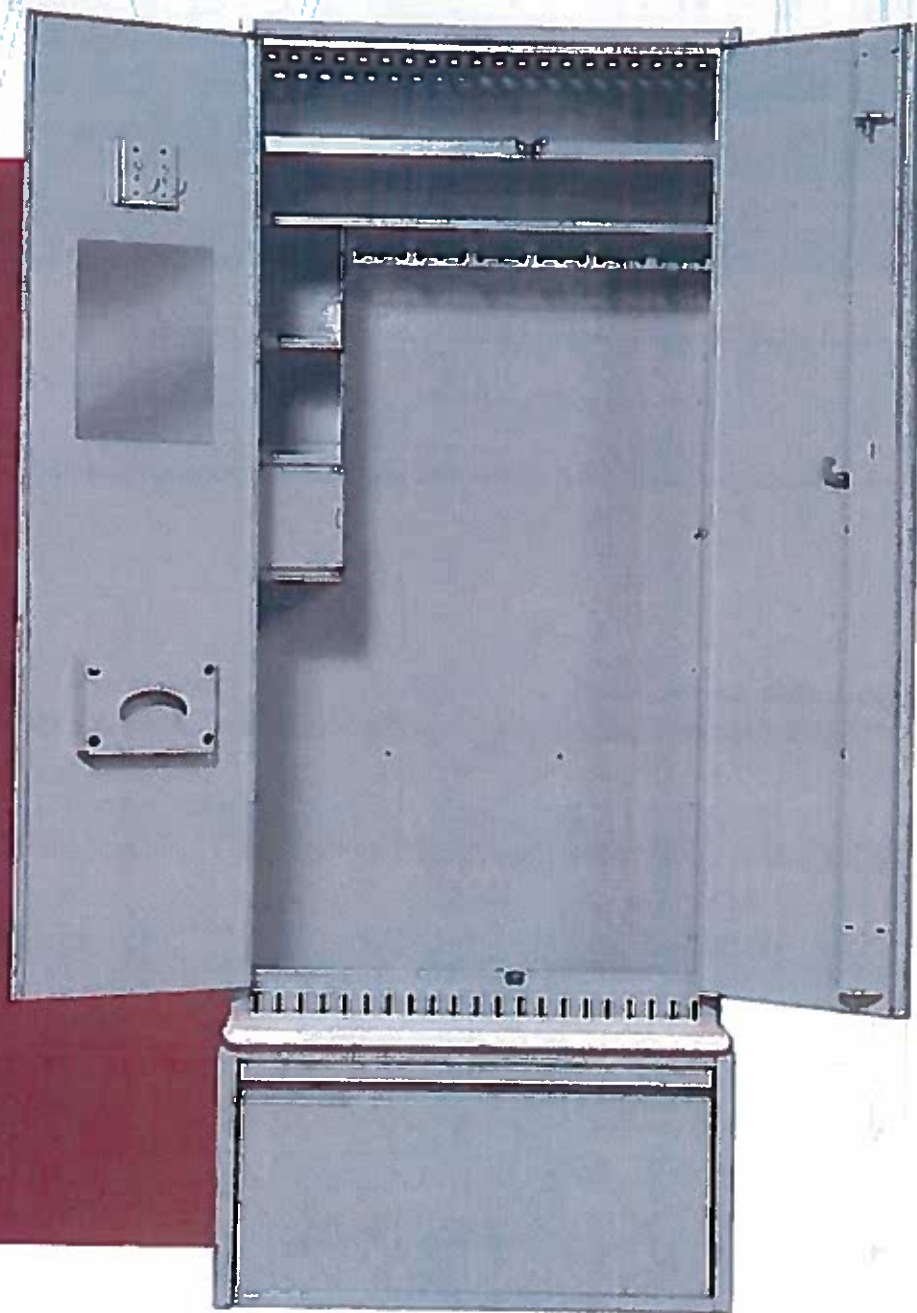
*THE ORIGINAL WARDROBE
LOCKER SPECIFICALLY
DEVELOPED FOR PUBLIC
SAFETY PERSONNEL*

*HEAVIEST GAUGE WARDROBE
LOCKER ON THE MARKET
USING 14 AND 16 GAUGE
STEEL*

*12 STANDARD STORAGE
AND ORGANIZATIONAL
COMPONENTS CONFIGURED
ON ALL UNITS*

*STRATEGICALLY ENGINEERED
FOR UNOBSTRUCTED
AIRFLOW THROUGHOUT THE
ENTIRE LOCKER OPENING*

*INDEPENDENT BASE DRAWER
AND ELECTRICAL OPTIONS
AVAILABLE*



(36"W with external base drawer shown)



*Manufacturing Quality
Metal Products
Since 1903*

AIRFLOW®

GSA Advantage!



116.

MEMORANDUM

To: Board of Selectmen

Fr: Laurie Smith, Town Manager

Re: Generator Replacement at Police Department

Dt: May 9, 2016

As part of Police Department addition and renovation project, the original design called for the replacement of our current generator. The replacement was needed due to the age of equipment as well as the desire to accommodate the power needs of the emergency operations center (EOC). We are upgrading from 35KW to a 48KW machine.

As part of our work to reduce the cost of the project and meet our budget goal, Pat Briggs, the Chief and I worked to find alternative funding and reduced pricing for the generator. We sought funding through the state and federal government; however, any funding available was only for Fire Departments. We also requested a grant from Kohler generators; however, the distance of our facility from the manufacturing hub in Pennsylvania ruled us out as an applicant.

We were successful at receiving a quote from POWR POINT for a Kohler generator at approximately half the cost of the one quoted in the bidding process. Wright-Ryan Construction has given us a price of \$37,620 for the generator and our quote from POWR POINT is \$18,825. We are seeking authorization from the BOS to procure the generator from POWR POINT.

POWER POINT

GENERATOR POWER SYSTEMS

11 Mill Brook Rd.
Saco, ME 04072
Phone 207-864-2787 Cell 207-670-8726

March 23, 2016

Kennebunkport Police Dept.
Route 9
Kennebunkport, ME
Email: pandamb@roadrunner.com

We are pleased to quote you the following:

Product: Qty. (1) one Kohler generator, model 48RCL, rated at 48kW/48kVA producing 200 amps, 120/240 Volt, single phase, 60Hz to include the following equipment:

- Unit mounted radiator
- Block heater
- Electronic, isochronous governor
- RDC2 Controller w/built in battery charger
- Critical exhaust silencer
- Kohler Aluminum sound enclosure
- Flexible fuel & exhaust connectors
- Kohler automatic transfer switch, model RXT-JFNC-400ASE
- Critical silencer
- Oil drain extension kit
- Battery, Battery rack and cables
- Five year limited warranty

Scope of work:

- Delivered to site
- Factory start up and testing.

Total Cost (Not including any applicable taxes):

\$18,825.00

Pow'r Point Generator Power Systems Payment Terms:

- 25% at the time of the order and remaining balance due at time of delivery

All work will be performed by licensed and insured technicians. Certificates of insurance will be provided upon request.

Thank you for the opportunity to quote a generator power system. I look forward to working with you. Should you have any questions regarding this quote, please feel free to contact me to discuss it in more detail.

Sincerely,

Jim Cesare
Vice President of Sales



Kennebunkport PD - Value Engineering Log
(savings are positive and increases are negative)

VE #	Division	Description	Savings Value	Status (A,B,C,P)	Accepted	Rejected	Pending	Comments	2/5/2016 B.L.C.
1	01	General Conditions Reduction >> 5mo	\$ 13,829	a	\$ 13,829				
2.1	02	Design changes per drawings received 12/10/15 (fence, sidewalks, pavement island)	\$ 3,949	xxxx	\$ 3,949			This item is fixed because of drawing changes	
2.2	16	Added 2 site lights	\$ 15,700	xxxx	\$ 15,700			This item is fixed because of drawing changes	
2a	02	Omit Site Paving (town will subcontract)	\$ 31,274	a	\$ 31,274				
2b	02	Omit 40' of Cedar Fence	\$ 1,687	a	\$ 1,687				
2c	02	Omit Sidewalk in front of building	\$ 1,105	a	\$ 1,105			Changed from 60"	
2d	16	Omit 2 Site Lights	\$ 5,700	a	\$ 5,700				Laure
2e	02	Omit Hand for painted Area	\$ 1,213	a	\$ 1,213				
2f	02	Site Drain Scope Reduction - Goal	\$ 34,200	xxxx	\$ 34,200				
2g	08	Omit Aluminum storefront for Galvanized Door	\$ 1,140	a	\$ 1,140			Realized - \$18,xxx includes side-lights	
3b	08	Omit Alum Sidelights**	\$ 1,140	a	\$ 1,140				
4	09	Omit Shower Tile for Acrylic Shower	\$ 2,554	a	\$ 2,554				
5	09	Omit Locker Room Tile for Vinyl Flooring & Base	\$ 4,597	a	\$ 4,597				
6a	10	Reuse Existing Lockers and purchase Less Expensive Option	\$ 15,504	r	\$ 15,504			May be open to this option depending on proposed	
6b	10	Supply all new less expensive Locker (19 count)	\$ 8,664	r	\$ 8,664				
6c	10	Supply 12 new lockers (7 less then original)	\$ 9,576	r	\$ 9,576				
6d	10	Supply 12 new less expensive lockers	\$ 15,048	a	\$ 15,048				
7	10	Omit Window Treatments	\$ 1,368	a	\$ 1,368			To be drawn as an Add/Alt	
8	08	Omit recessed Mat at Entrance for roll out mat	\$ 1,026	a	\$ 1,026				
9	08	Omit Barn Door for Other	\$ 1,596	a	\$ 1,596			To be drawn as an Add/Alt	
10	16	Omit Generator and Use Existing	\$ 37,620	r	\$ 37,620				
11	01	Omit Site Tracker for interior temporary office	\$ 3,233	a	\$ 3,233				
12	02	Gravel small Parking Lot Area	\$ 7,980	r	\$ 7,980			GOAL	
13	08	Omit Hurricane Window for Ultraflex Window	\$ 9,850	r	\$ 9,850				
13.1	08	Window reduction of 40'x10'	\$ 3,000	a	\$ 3,000				
14	01	Postpone Renovation	\$ 67,909	r	\$ 67,909				
15a	07	Omit Cement Plank Siding & Trim for Vinyl Siding	\$ 11,163	r	\$ 11,163				
15b	07	Omit Cement Plank Siding for Vinyl	\$ 5,164	a	\$ 5,164				
16	02	Reduce Parking spaces to 9H.	\$ 5,130	r	\$ 5,130				
17	09	Omit tile at Entrance for "Walt Off Carpet"	\$ 2,445	a	\$ 2,445				
18	07	Use Blown in Cellulose for Exterior Wall	\$ 1,005	a	\$ 1,005				
19	16	Omit Card Key Entry	\$ 5,700	a	\$ 5,700				
20	02	Omit Impound Cage	\$ 5,258	a	\$ 5,258			To be drawn as an Add/Alt	
21	02	Omit 3-sec Chamber Additions	\$ 9,690	a	\$ 9,690			Testing comes back showing full system	
22	01	Omit P&P Bond	\$ 4,947	r	\$ 4,947				
23	16	Omit Plantings in neighbors yard - if town stops turbine	\$ 6,840	p	\$ 6,840			Wright-Ryan has assumed no work to existing turbine (remove, maintain, sing)	
24									
25									
26									
27									

Total Available	\$ 336,604	Total Accepted	\$ 117,022	Total Rejected	\$ 6,840	Total Pending	\$ 302,404
Schematic Estimate Total:	\$ 685,195	Accepted VE:	\$ 117,022	Construction Total Estimate:	\$ 568,173		

13



VantageCare Retirement Health Savings (RHS) PLAN AMENDMENT PACKET

To amend your existing RHS Plan, please complete the entire Adoption Agreement, including items that are not being amended. When you send your amendment to ICMA-RC, please summarize the changes in your cover letter.

Please note that ICMA-RC does not require the use of a resolution to amend the plan. Should you require legislative action, you may use the Suggested Resolution for Amendment on the following page. If you do not require legislative action, you may complete the Suggested Affirmative Statement for Amendment which follows.

Once the amendment is completed, retain a copy for your records and send the original with the cover letter and either the resolution or the affirmative statement to ICMA-RC as follows:

Via Mail

ICMA-RC

Attn – New Business Services

Suite 600

777 North Capitol Street, NE

Washington, DC 20002-4240

Via Facsimile

202-962-4601

Attn – New Business Services

You will receive notification that your amendment has been received and accepted.



**EMPLOYER VANTAGECARE
RETIREMENT HEALTH SAVINGS (RHS)
ADOPTION AGREEMENT**

**VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS)
ADOPTION AGREEMENT**

Plan Number: 8 801313

Select as applicable: ☐ Standalone RHS ☐ Integrated RHS ☒ Amendment to Existing Plan ☐ New Plan

I. Employer Name: Town of Kennebunkport State: Maine

II. The Employer hereby attests that it is a unit of a state or local government or an agency or instrumentality of one or more units of a state or local government.

III. Plan Dates:

A. Plan Effective Date May 12, 2016

B. Plan Year: Enter the annual accounting period for the RHS program. July 1 to June 30

IV. The Employer intends to utilize the Trust to fund only welfare benefits pursuant to the following welfare benefit plan(s) established by the Employer: _____

V. Eligible Groups, Participation and Participant Eligibility Requirements

A. Eligible Groups

The following group or groups of Employees are eligible to participate in the Employer's welfare benefits plan identified in Section IV. (check all applicable boxes):

- ☐ All Employees
- ☐ All Full-Time Employees
- ☐ Non-Union Employees
- ☐ Public Safety Employees – Police
- ☐ Public Safety Employees – Firefighters
- ☐ General Employees
- ☒ Collectively-Bargained Employees (Specify unit(s)) Group 2
- ☒ Other (specify group(s)) Non Union Employees Group 1

The Employee group(s) specified must correspond to a group(s) of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other documents or provisions in effect in the state or locality of the Employer.

B. Participation

Mandatory Participation: All Employees in the covered group(s) are required to participate in the Plan and shall receive contributions pursuant to Section VI.

If the Employer's underlying welfare benefit plan is in whole or part a non-collectively bargained plan that allows reimbursement for medical expenses other than insurance premiums, the nondiscrimination requirements of Internal Revenue Code (IRC) Section 105(h) will apply. These rules may impose taxation on the benefits received by highly compensated individuals if the Plan discriminates in favor of highly compensated individuals in terms of eligibility or benefits. The Employer should discuss these rules with appropriate counsel.

C. Participant Eligibility Requirements

1. Minimum service: The minimum period of service required for participation is N/A (write N/A if no minimum service is required).
2. Minimum age: The minimum age required for eligibility to participate is N/A (write N/A if no minimum age is required).

VI. Contribution Sources and Amounts

A. Definition of Earnings

The definition of Earnings will apply to all RHS Contribution Features that reference "Earnings", including Direct Employer Contributions (Section VI.B.1.) and Mandatory Employee Compensation Contributions (Section VI.B.2.).

Definition of earnings: _____

B. Direct Employer Contributions and Mandatory Contributions

1. Direct Employer Contributions

The Employer shall contribute on behalf of each Participant

- ☐ _____ % of Earnings*
- ☐ \$ _____ each Plan Year
- ☐ A discretionary amount to be determined each Plan Year
- ☐ Other (describe): _____

2. Mandatory Employee Compensation Contributions

The Employer will make mandatory contributions of Employee compensation as follows:

- ☐ Reduction in Salary - _____ % of Earnings or \$ _____ will be contributed for the Plan Year.
- ☐ Decreased Merit or Pay Plan Adjustment - All or a portion of the Employees' annual merit or pay plan adjustment will be contributed as follows:

An Employee shall not have the right to discontinue or vary the rate of Mandatory Contributions of Employee Compensation.

3. Mandatory Employee Leave Contributions

The Employer will make mandatory contributions of accrued leave as follows (provide formula for determining Mandatory Employee Leave contributions):

- ☒ Accrued Sick Leave Group 1 = 85% of hours over 200 to a
max of 8 days/Group 2 = 85% of hours over 480
- ☐ Accrued Vacation Leave to a max of 7 days

- ☐ Other (specify type of leave) Accrued _____ Leave

An Employee shall not have the right to discontinue or vary the rate of mandatory leave contributions.

* Non-collectively bargained plans that reimburse medical expenses other than insurance premiums should consult their benefits counsel regarding welfare plan nondiscrimination rules if the employer elects to make contributions based on a percentage of earnings.

C. Limits on Total Contributions (check one box)

The total contribution by the Employer on behalf of each Participant (including Direct Employer and Mandatory Employee Contributions) for each Plan Year shall not exceed the following limit(s) below. Limits on individual contribution types are defined within the appropriate section above.

- ☐ There is no Plan-defined limit on the percentage or dollar amount of earnings that may be contributed.
- ☐ ____ % of earnings
Definition of earnings: ☐ Same as Section VI.A. ☐ Other
- ☐ \$ ____ for the Plan year.

VII. Vesting for Direct Employer Contributions

A. Vesting Schedule (check one box)

- ☐ The account is 100% vested at all times.
- ☐ The following vesting schedule shall apply to Direct Employer Contributions as outlined in Section VI.B.1.:

Years of Service Completed	Vesting Percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

- B. The account will become 100% vested upon the death, disability, retirement*, or attainment of benefit eligibility (as outlined in Section IX) by a Participant.**

*Definition of retirement includes a separation from service component and is further defined by (check one):

- ☐ The primary retirement plan of the Employer
- ☒ Separation from service
- ☐ Other _____

- C. Any period of service by a Participant prior to a rehire of the Participant by the Employer shall not count toward the vesting schedule outlined in A above.**

VIII. Forfeiture Provisions

If a Participant separates from service prior to full vesting, non-vested funds in the Participant's account shall be forfeited in accordance with the box checked under this section.

Upon the death of a participant, surviving spouse, and all surviving eligible dependents (as outlined in Section XI), funds remaining in the Participant's account shall be revert to the Trust in accordance with the box checked under this section.

If a Participant permanently opts out and waives future reimbursements, as allowed under IRS Notice 2013-54, all funds in the Participant's account at the time of waiver shall be forfeited in accordance with the box checked under this section.*

- ☐ Remain in the Trust to be reallocated among all remaining Employees participating in the Plan as Direct Employer Contributions for the next and succeeding contribution cycle(s).
- ☐ Remain in the Trust to be reallocated on an equal dollar basis among all Plan Participants.
- ☐ Remain in the Trust to be reallocated among all Plan Participants based upon Participant account balances.
- ☐ Revert to the Employer.

IX. Eligibility Requirements to Receive Medical Benefit Payments from the VantageCare Retirement Health Savings Program

A. A Participant is eligible to receive benefits:

- ☐ At retirement only (also complete Section B.)
Definition of retirement:
 - ☒ Same as Section VII.B.
 - ☐ Other _____
- ☐ At separation from service with the following restrictions
 - ☒ No restrictions
 - ☐ Other _____

B. Termination prior to general benefit eligibility: In case where the general benefit eligibility as outlined in Section IX.A includes a retirement component, a Participant who separates from service of the Employer prior to retirement will be eligible to receive benefits:

- ☒ Immediately upon separation from service
- ☐ Other _____

C. A Participant that becomes totally and permanently disabled

- ☐ as defined by the Social Security Administration
- ☐ as defined by the Employer's primary retirement plan
- ☐ other _____

will become immediately eligible to receive medical benefit payments from his/her account under the Employer's welfare benefits plan.

D. Upon the death of the Participant, benefits shall become payable as outlined in Section XI.

**If the Employer's RHS Program does not limit eligibility to participants who have separated from service, the employer will be required to provide further direction to ICMA-RC regarding the treatment of possible contributions that are required to be made following the participant's waiver.*

X. Permissible Medical Benefit Payments

Benefits eligible for reimbursement consist of:

- ☒ All Medical Expenses eligible under IRC Section 213 other than (i) direct long-term care expenses, and (ii) expenses for medicines or drugs which are not prescribed drugs (other than insulin).
- ☐ The following Medical Expenses eligible under IRC Section 213 other than (i) direct long-term care expenses, and (ii) expenses for medicines or drugs which are not prescribed drugs (other than insulin). Select only the expenses you wish to cover under the Employer's welfare benefits plan:
 - ☐ Medical Insurance Premiums
 - ☐ Medical Out-of-Pocket Expenses*
 - ☐ Medicare Part B Insurance Premiums
 - ☐ Medicare Part D Insurance Premiums
 - ☐ Medicare Supplemental Insurance Premiums
 - ☐ Prescription Drug Insurance Premiums
 - ☐ COBRA Insurance Premiums
 - ☐ Dental Insurance Premiums
 - ☐ Dental Out-of-Pocket Expenses*
 - ☐ Vision Insurance Premiums
 - ☐ Vision Out-of-Pocket Expenses*
 - ☐ Qualified Long-Term Care Insurance Premiums
 - ☐ Non-Prescription medications allowed under IRS guidance*
 - ☐ Other qualifying medical expenses (describe)*

* *Non-collectively bargained plans that reimburse medical expenses other than insurance premiums should consult their benefits counsel regarding welfare plan nondiscrimination rules if the employer elects to make contributions based on a percentage of earnings.*

XI. Benefits After the Death of the Participant

In the event of a Participant's death, the following shall apply:

A. Surviving Spouse and/or Surviving Dependents

Upon the death of a participant, the surviving spouse and/or surviving eligible dependents (as defined in Section XII.D.) of the deceased Participant are immediately eligible to maintain the Participant's RHS account and utilizing the remaining balance to fund eligible medical benefits specified in Section X above.

Upon notification of a Participant's death, the Participant's account balance will be transferred into Dreyfus Cash Management fund** (or another fund selected by the Employer). The account balance may be reallocated by the surviving spouse or dependents.

** *An investment in the Dreyfus Cash Management money market fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the fund seeks to preserve the value of your investment at \$1.00 per share, it is possible to lose money by investing in the fund. Investors should consider the investment objectives, risks, charges, and expenses of the fund carefully before investing. You may visit us at www.icmarc.org or call 800-669-7400 to obtain a prospectus that contains this and other information about the fund. Read the prospectus carefully before investing.*

If a Participant's account balance has not been fully utilized upon the death of the eligible spouse, the account balance may continue to be utilized to pay benefits of eligible dependents. Upon the death of all eligible dependents, the account will revert in accordance with the Employer's election under Section VIII of the *VantageCare RHS Adoption Agreement*.

B. No Surviving Spouse or Surviving Dependents

If there are no living spouse or dependents at the time of death of the Participant, the account will revert in accordance with the Employer's election under Section VIII of the *VantageCare RHS Adoption Agreement*.

XII. The Plan will operate according to the following provisions:

A. Employer Responsibilities

1. The Employer will submit all VantageCare Retirement Health Savings Plan contribution data via electronic submission.
 2. The Employer will submit all VantageCare Retirement Health Savings Plan Participant status updates or personal information updates via electronic submission. This includes but is not limited to termination notification, benefit eligibility, and vesting notification.
- B.** Participant account administration and asset-based fees will be paid through the redemption of Participant account shares, unless agreed upon otherwise in the Administrative Services Agreement.
- C.** Assignment of benefits is not permitted. Benefits will be paid only to the Participant, his/her Survivors, the Employer, or an insurance provider (as allowed by the claims administrator). Payments to a third-party payee (e.g., medical service provider) are not permitted with the exception of reimbursement to the Employer or insurance provider (as allowed by the claims administrator).
- D.** An eligible dependent is (a) the Participant's lawful spouse, (b) the Participant's child under the age of 27, as defined by IRC Section 152(f)(1) and Internal Revenue Service Notice 2010-38, or (c) any other individual who is a person described in IRC Section 152(a), as clarified by Internal Revenue Service Notice 2004-79.
- E.** The Employer will be responsible for withholding, reporting and remitting any applicable taxes for payments which are deemed to be discriminatory under IRC Section 105(h), as outlined in the *VantageCare Retirement Health Savings Employer Manual*.

XIII. Employer Acknowledgements

- A.** The Employer hereby acknowledges it understands that failure to properly fill out this *VantageCare Retirement Health Savings Adoption Agreement* may result in the loss of tax exemption of the Trust and/or loss of tax-deferred status for Employer contributions.
- B.** ☐ Check this box if you are including supporting documents that include plan provisions.

EMPLOYER SIGNATURE

By: _____

Date: _____

Title: _____

Attest: _____

Date: _____

Title: _____



SUGGESTED RESOLUTION FOR AMENDMENT

AND

SUGGESTED AFFIRMATIVE STATEMENT FOR AMENDMENT

**SUGGESTED RESOLUTION FOR AMENDMENT OF THE
VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS) PROGRAM**

Plan Number: 801313

Name of Employer: Town of Kennebunkport State: Maine

Resolution of the above-named Employer (the "Employer"):

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the amendment of its existing retiree health savings plan for such employees serves the interests of the Employer and Employees.

NOW, THEREFORE BE IT RESOLVED, that the Employer hereby amends the Plan in the form of the ICMA Retirement Corporation's VantageCare Retirement Health Savings program.

I, _____, Clerk of the _____ of _____, do hereby certify that the foregoing resolution, proposed by _____, was duly passed and adopted in the _____ of the _____ of _____, at a regular meeting thereof assembled this _____ day of _____, 20____, by the following vote:

AYES:

NAYS:

ABSENT:

(Seal)

Clerk's Signature: _____

Clerk's Title: _____

Date: _____

**SUGGESTED AFFIRMATIVE STATEMENT FOR AMENDMENT OF THE
VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS) PROGRAM**

Plan Number: 801313

Name of Employer: Town of Kennebunkport State: Maine

Affirmative Statement of the above-named Employer (the "Employer"):

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the amendment of its existing retiree health savings plan serves the interests of the Employer and its Employees; and

NOW THEREFORE, as a duly authorized agent of the Employer, I hereby:

AMEND the Employer's Plan in the form of the ICMA Retirement Corporation's VantageCare Retirement Health Savings program.

DATE: _____

Title of Designated Agent

Signature

14

TOWN OF KENNEBUNKPORT
Street Opening Permit

Name of Owner: KKWWD Date of Application: 4/28/16
(First, Middle Initial, Last)

Address: 98 Main St Kennebunk

Telephone: 985-3385 Tax Map _____, Block _____, Lot _____

Name of street to be excavated: Ocean Ave

Approximate size of excavation: Length 575' Width 8'

Reason for Permit: Renew & Relocate Existing water main
from Summit Ave 575' North toward Endcliff

Permit Conditions: If there is any intrusion into the black top, road should be paved from curb to curb.

Date excavation is to take place: 5/4 - 6/10/16

Contractor: KKWWD

Address: 98 Main St

Telephone: 985 3385 Fax: 985-3102

Bond Amount: \$ _____

Company: _____
(To be certified and given to Town Clerk to record)

Insurance Company & Certificates: _____

APPROVED: [Signature] Date: 5/2/16
Highway Superintendent

Selectmen _____ Selectmen _____

Selectmen _____ Selectmen _____

FEE: \$25.00 _____
Selectmen (Town paid stamp here)

Please attach plan.



Maine Municipal Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428
www.memun.org

16a

To: MMA's Key Municipal Officials

From: Stephan Bunker, President, Maine Municipal Association

Date: May 2, 2016

Re: Nominations to MMA's Legislative Policy Committee

This memo begins the process of electing 70 dedicated municipal officials to serve on MMA's Legislative Policy Committee (LPC) over the next two-year period. Given the importance of this Policy Committee to MMA's overall mission, I urge you to help us identify nominees for service during the 2016-2018 biennium.

The LPC brings elected and appointed officials together from towns and cities across the state. According to its by-laws, the purpose of the LPC is "*to define municipal interests and to maximize those interests through effective participation in the legislative process.*" Operating something like a town meeting, the LPC establishes MMA's public policy positions on all matters of direct and statewide municipal interest for representation in the State House. The LPC meets at the MMA building in Augusta once a month during the first several months of each legislative session.

After the next LPC is elected, its first task will be to develop MMA's legislative agenda for submission to the Legislature in January 2017. Beginning in early 2017 the LPC will meet to determine MMA's position on all municipally-related legislation submitted by the Governor and legislators. MMA's legislative staff advocates for the positions established by the LPC.

The membership of the LPC tends to be a mixture of seasoned veterans, who bring an extraordinary depth of experience to the table, and new members with fresh concerns and insights. Speaking as a former Chair of the LPC, it is my observation that the debates and decision-making accomplished by this Committee often include public policy discussions of the highest caliber. The results certainly help establish MMA's credibility in the Maine legislative process.

A Nomination Form is enclosed. Two municipal officials are elected from each of Maine's 35 Senate Districts. What follows is background information on the process of election, and the suggested time commitment to serve.

Background Information. Any elected or appointed municipal official holding office in any MMA member community is eligible to serve on the Committee. There are two seats on the LPC for each State Senate District. Members serve two-year terms, representing their own community and the other municipalities in their Senate District.

LPC activities require a time commitment of approximately ten hours a month during legislative sessions (i.e., during the first 4 months of each calendar year) which includes attendance

at the monthly meeting and contacts with other communities and legislators in the district as issues arise. The LPC is also engaged in the development of MMA's legislative agenda during the fall and early winter of each even-numbered year, which typically involves at least one additional meeting in Augusta. All mileage expenses are reimbursed. MMA's strength as a municipal advocate depends on the active help of a dedicated LPC membership.

More information about MMA's Legislative Policy Committee and the Association's entire advocacy program can be found at the Legislative/Advocacy link at MMA's website <http://www.memun.org/LegislativeAdvocacy/TheLPCHandbook.aspx>. In particular, the *LPC Handbook* describes the Association's overall policy development process and procedures in more detail.

Nomination Process

Your municipality is entitled to nominate a representative to the LPC.

- The nominee may be either elected or appointed, but must be serving currently as a municipal official.
- You may nominate any municipal official from any member town or city within your Senate/LPC District; you do not have to nominate someone from your municipality.
- The names and brief bios of all municipal officials properly nominated will appear on the LPC ballot, which will be distributed on June 23rd.

Nominee Profile

Because the municipal officers may not be familiar with a nominee from another municipality, a brief description of each nominee who completes the enclosed **Nominee Profile Sheet** will be provided with the ballots that are distributed in late June. Please make sure that the person you nominate has a chance to complete the Nominee Profile Sheet and that it is returned to MMA with the Nomination Form.

Deadline for Submitting Nomination

- ✍ The Chairman of your Board of Selectman, Council or Assessors (the "nominator") *and the nominee* must sign the nomination form for it to be valid.
- ✉ The form must be returned to MMA by 5:00 p.m. on June 21, 2016, to be counted. Ballots will be mailed out immediately after the nomination process closes, so make sure the nomination form is received by MMA by that deadline. Please return the nomination form to **Laura Ellis** at MMA either by mail (60 Community Drive, Augusta, Maine, 04330), by FAX (624-0129) or by email (Lellis@memun.org).

If you have any questions, please call MMA's State and Federal Relations staff at 1-800-452-8786 or 623-8428.

NOMINATION FORM

Maine Municipal Association's
Legislative Policy Committee
July 2016 to June 2018


Senate District 32 (*Biddeford appoints 1 LPC Member*)

Alfred
Arundel


Biddeford
Dayton

Kennebunkport
Lyman

The municipal officers of _____ hereby nominate:
Print name of your municipality

Nominee: _____ 
Print name of Nominee

Nominee's municipality: _____ Position: _____

Date: _____
Signature of Nominator 

Print name of Nominator

Consent

I agree to accept the nomination and to serve if elected to the MMA Legislative Policy Committee:

Date: _____
Signature of Nominee 

Please return Nomination Form by 5:00 p.m. on June 21, 2016, to:

Laura Ellis - Maine Municipal Association
60 Community Drive, Augusta, ME 04330
FAX: 624-0129

Nominations received after 5:00 p.m. on June 21, 2016 will not be counted.