

Spring 2009



SOUTHERN MAINE REGIONAL PLANNING COMMISSION

Regional Newsletter

SMRPC RECEIVES ANOTHER MILLION DOLLAR BROWNFIELDS GRANT FROM EPA

On May 11th, SMRPC was informed by EPA that the Commission had received a Brownfields Revolving Loan Fund Grant in the amount of \$1,000,000. This was the second million dollar allocation that SMRPC had received. Over the course of the past year, SMRPC had allocated the original money as loans to the North Dam Mill Project in Biddeford and grants to the Caleb Foundation (affordable housing in North Berwick) and the town of Sanford (money to assist with the clean-up of the Sanford Mill for a mixed use project).

SMRPC has been extremely successful with identifying and funding brownfields projects that meet the planning and development goals set by the SMRPC Executive Committee and endorsed by EPA. These guidelines include; revitalizing downtowns; developing affordable and workforce housing opportunities; creating economic development opportunities and jobs; cleaning contaminated sites and protecting public health; leveraging private funds; and saving taxpayer dollars by getting properties back on the tax rolls and investing in needed community development.

In fact, we have been so successful in our outreach efforts (with the assistance of our local partners, planners, and managers) that we now have more than 3 million dollars of additional projects seeking funding. These projects include additional workforce housing in a mill in Biddeford, removal of asbestos and lead for a potential new library in South Berwick, ongoing development at Saco Island and other projects as well. The benefits of these projects are numerous and the job creation aspect of the projects – both short and long-term – can not be emphasized enough.

SMRPC is truly grateful to the EPA, our local partners, our consultants, the local developers who have moved forward with these projects in these economic times, and our congressional delegation as we continue with this regional program.

NOTICE—THIS IS LAST PAPER NEWSLETTER!!

This will be the last old-fashioned, printed, paper newsletter delivered by old fashioned, US Post Office snail-mail. We have resisted converting the paper newsletter to a digital format and delivering it electronically because many of the citizens in our region haven't had adequate computer availability or capabilities. At this point, however, we have recognized that most of our members have become technically savvy, and we will all benefit from the cost savings of producing and delivering an electronic newsletter. Besides reducing the use and cost of resources, some of the benefits to using an electronic newsletter format are the availability to include richer content, like more graphics, maps, photos, and relevant website links.

To continue to receive our future newsletters (as well as other workshop and meeting notices) please ensure that Marian Alexandre malexandre@smrpc.org has your current e-mail address.



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SHORELAND ZONING STATE-IMPOSED ORDINANCE and/or MAP

The Maine Shoreland Zoning Act mandates municipalities to enact shoreland zoning ordinances and maps, and update their ordinances and/or maps when the Maine DEP amends the Shoreland Zoning Rules. When a municipality fails to do so, the DEP is charged with adopting a suitable ordinance and/or map for the municipality by way of a State-Imposed Ordinance (SIO) or Supplemental Ordinance and/or Map. The SIO comes with a Department Order that requires the municipality to administer and enforce the SIO.

A few municipalities in our region currently have a SIO, but after July 1st of this year, if a municipality has not begun the process to update their shoreland zoning ordinances to incorporate the latest DEP shoreland zoning amendments, the DEP will impose the amendments required, and will be notified of the proposed SIO.

Some municipalities have determined that they are unable to adopt their own ordinance and/or amendments, while others may be interested in having a SIO. The disadvantages of a SIO include the fact that it may not be molded well to your municipalities' characteristics, and only the Board of Environmental Protection is able to make amendments, taking a minimum of three months to complete.

SMRPC has assisted with 15 towns in our region to update their shoreland zoning map and/or text. Some towns have made their own changes, while others have hired private consultants to help with the task. Even after the July 1st deadline or after receiving a SIO, municipalities can still amend their shoreland zoning ordinances to incorporate unique circumstances and protect local

COOPERATIVE PURCHASING

SMRPC, working jointly with Greater Portland Council of Governments (GPCOG), continue to seek ways to save our municipalities and schools money by going out to bid for services and everyday supplies used.

Road Paving, Tubes & Tires, Gasoline & Diesel Fuel, Heating Fuel & Propane, Winter Road Salt, Office Supplies, Pavement Marking, and Copy Paper are only some of the services and supplies our members have already benefited from.

2009-2010 Copy Paper bid price is NOW ONLY \$25.20 per case and colored paper \$31.71 per case.

To find out how to participate in these cost-saving purchases or to find out the lowest bid pricing, please contact Marian Alexandre at (207) 324-2952 or e-mail her at malexandre@smrpc.org

CASE NOTES

By: Madge Baker, Esq.

Nestle Waters North America, Inc. v. Town of Fryeburg, Maine Supreme Judicial Court, March 19, 2009
Zoning and Comprehensive Plan case

Facts: Nestle Waters North America, Inc. doing business as Poland Spring Bottling Co. (hereinafter called Poland Spring) appealed to Maine's Supreme Judicial Court to overturn a Superior Court decision affirming a 2007 decision by the Fryeburg Planning Board that denied Poland Spring a permit to build a water loadout facility on property in the Town's rural/residential zone.

The case took a long while to reach the Supreme Judicial Court. It all began in 2005 when Poland Spring applied for a permit from the Town Planning Board (PB) to build a loadout facility. The water was to be pumped from wells in Denmark to the facility located on a 59 acre parcel on Route 302 in Fryeburg. There it would be loaded into trucks for hauling to the nearest Poland Spring bottling plant. The PB reviewed the application carefully and thoroughly and rendered "extensive written findings" and the conclusion that a permit had to be granted because all applicable standards of the ordinance were met. A citizen's group, Western Maine Residents for Rural Living, or WMRRL, together with the Town appealed the decision to the Board of Appeals (BOA). The BOA overruled the PB decision by a vote of 3 – 2. Poland Spring appealed to Superior Court. That Court ruled that the PB should have addressed what the Comprehensive Plan said in arriving at their conclusion, and therefore remanded the case to the PB. When the PB heard the case in 2007 its membership was very different. The PB decided that the application did not comply with stated objectives in the Comprehensive Plan. Consequently, the PB denied the application at that time. Poland Spring appealed.

Issues:

- Was Superior Court correct in requiring the PB to take into account what the Comprehensive Plan said when considering how to rule on the application?
- And if not, then was the PB decision in 2005 that the project as proposed, did comply with the requirements of the Fryeburg land use ordinance supported by substantial evidence in the record, and was the decision-making process carried out in accordance with constitutional requirements of fairness and reasonableness?

Ruling:

The Maine Supreme Judicial Court overturned the ruling of the Superior Court and upheld the 2005 decision of the Planning Board.

1. The Justices looked at the question of applicability of the Comprehensive Plan. They found that the Plan had been adopted in 1994. In 1998 the Town enacted the land use ordinance. The Court emphasized that the Plan is to provide a vision of the future while the ordinance is to help implement the vision through regulation. Thus the two are not interchangeable. In fact, the Comp Plan states emphatically that it is NOT an ordinance and it does not include a zoning map. Moreover, the Plan applies to the Town only, not to individuals and specific businesses.

Next the Court looked at the applicable ordinance provisions and found NO requirement that the PB apply the Comp Plan in the review of a specific application. Justice Mead, writing for the Court, concluded that the Superior Court had erred in requiring the PB to apply the Comp Plan to this case.

2. Once the Court had dispensed with the Superior Court ruling, the Justices turned their attention to the 2005 PB decision. What they found was an extensive record that included substantial evidence to support each finding. The most contentious issue raised in 2005 was whether the PB had been correct to decide that the project would not "unreasonably interfere with adjacent landowners." When the Court examined the Board's analysis of this topic, the Justices found that here too, the Board had made lengthy findings. The PB found the facility was not visible to neighbors, and that there was adequate buffer to prevent noise, fumes, and light from being noticed off site. Moreover, the PB had attached 12 conditions to reduce impact from the facility. Another contentious issue was that of access control and traffic impact. To ensure thorough analysis of this topic, two engineering firms participated. Both firms generally agreed that the project presented no major traffic concerns. In addition, the PB imposed conditions regulating the hours and frequency of truck trips in and out of the site.

Comment: The Court opinion is lengthy. The Justices repeatedly included specific language and/or information from the 2005 PB decision to document why they were upholding that decision. They were clearly impressed with the remarkable thoroughness of the PB's analysis, and the skill with which it was articulated. So was I.

SHORELAND ZONING PITFALLS

Since the DEP adopted new Shoreland Zoning rules in 2006, SMRPC's planners J.T. Lockman and Jamie Oman-Saltmarsh have worked on ordinance and/or map changes for 15 different towns. Lately we have found ourselves discussing some pitfalls of the program that we have experienced, that we feel we should warn our readers about:

1. Notice Issues. When a town adopts a new shoreland zoning ordinance text and map, there are two different statutes that govern how the public should be noticed. These disparate requirements don't really work too well together, but both need to be followed, and are located in Title 30-A and Title 38. If you only read the first statutes, you will end up out of compliance! Failure to comply could lead to lawsuits. SMRPC staff would be happy to provide sample notice language, developed by Jim Gulnac, Sanford Town Planner, which seems to have covered all of the statutory requirements. Here are the cites (see areas in italics, added for emphasis):

Title 30-A M.R.S.A. sec. 4352, Zoning Ordinances, subparts 9 & 10

9. Notice; general requirements. Before adopting a new zoning ordinance or map or amending an existing zoning ordinance or map, *including ordinances or amendments adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B*, the municipal reviewing authority must post and publish notice of the public hearing required under subsection 1 in accordance with the following provisions.

A. *The notice must be posted in the municipal office at least 13 days before the public hearing.* [1997, c. 36, §2 (AMD) .]

B. *The notice must be published at least 2 times in a newspaper that complies with Title 1, section 601 and that has a general circulation in the municipality. The date of the first publication must be at least 12 days before the hearing and the date of the 2nd publication must be at least 7 days before the hearing. That notice must be written in plain English, understandable by the average citizen.* [1997, c. 36, §2 (AMD) .]

C. [1993, c. 374, §3 (RP) .]

D. [1993, c. 374, §3 (RP) .]

E. *Notice must be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area.* [1999, c. 761, §8 (NEW) .]
[1999, c. 761, §8 (AMD) .]

10. Additional notice; limited areas. Notice must be given in accordance with this subsection and subsection 9 when a municipality has proposed an amendment to an existing zoning ordinance or map that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited.

A. The notice must contain a copy of a map indicating the portion of the municipality affected by the proposed amendment. [1993, c. 374, §4 (NEW) .]

B. For each parcel within the municipality that is in or abutting the portion of the municipality affected by the proposed amendment, the notice must be mailed by first class mail at least 13 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. Notice also must be sent to a public drinking water supplier, if the area to be rezoned is within its source water protection area. The municipal officers shall prepare and file with the municipal clerk, a written certificate indicating those persons to whom the notice was mailed, and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. *Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B.*

[1999, c. 761, §9 (AMD).]

Title 38 M.R.S.A. sec. 438-A. Municipal Authority; State Oversight, subpart 1-B

1-B. Notification to landowners. *This subsection governs notice to landowners whose property is being considered for placement in a resource protection zone.*

A. In addition to the notice required by Title 30-A, section 4352, subsection 9, a municipality shall provide written notification to landowners whose property is being considered by the municipality for placement in a resource protection zone. Notification to landowners must be made by first-class mail to the last known addresses of the persons against whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the municipal clerk a sworn, notarized certificate indicating those persons to whom notice was mailed and at what addresses, and when, by whom and from what location notice was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. The municipality must send notice no later than 14 days before its planning board votes to establish a public hearing on adoption or amendment of a zoning ordinance or map that places the landowners' property in the resource protection zone. Once a landowner's property has been placed in a resource protection zone, individual notice is not required to be sent to the landowner when the zoning ordinance or map is later amended in a way that does not affect the inclusion of the landowner's property in the resource protection zone. [1995, c. 542, §1 (NEW).]

2. Wading Bird and Waterfowl Habitats/Salt Marshes and Salt Meadows – Issues with Mandated Resource Protection Districts

The DEP Shoreland Zoning Rules require that a 250 foot resource protection district be placed around moderate or high value inland wading and waterfowl habitats (IWWH) as well as salt marshes and salt meadows, that are indicated in a GIS layer provided by the State as of May 2006. We have encountered the following problems so far with this issue:

1. Mistakes were found in the May 2006 layer, and the DIFW has reposted a series of new, replacement layers on the website since May 2006. Some RP districts are indicated that surround a wetland of less than 10 acres, and therefore should not have been included. It is unclear whether all these mistakes have been corrected yet. On the MEGIS website, a consistent, understandable naming and dating system has not been employed with the IWWH layer, with different versions of the file having the same name. Also, it appears that sometimes a file marked as “New” has been put on the website and it has really been “old.” So it may be difficult to tell whether your map is compliant, or even which file was employed in the making of your map. At the moment of this writing, no file is posted on the MEGIS website as the matter is under review.

2. Significant Salt Marshes and Salt Meadows, which were designated on paper maps in 1973, have never been digitized, and were never added to the May 2006 GIS layer. DEP has informed SMRPC that nonetheless, the Department will require these 1973 resources to have 250 foot “RP” buffers placed around them. SMRPC is trying to obtain copies of these 1973 maps at this time. If you have such resources in your town, we did not include them on your Shoreland Zoning Map, because of this problem.

3. Developed areas of shoreland, with 2 or more existing structures within 1000 feet of shoreline, may be exempted from Resource Protection designation. DIFW had adjusted the May 2006 GIS data to cut out already developed areas, in some cases, but not in all cases.

Regional planning commission staffers from Caribou and Calais, to here in Springvale, have been working with the State DEP and DIFW to bring forward these problems as they have been uncovered, and to advocate for better information for Towns. If you have any questions on RP habitats or SLZ notice requirements, contact Jamie or J.T.

WATER EXTRACTION ORDINANCE OPINION

The following is the Wells Town Attorney's opinion on a petitioned water extraction ordinance, which failed at a special town meeting in Wells on May 16, 2009. This was written by Leah Rachin Esq. of Bergen & Parkinson, Kennebunk, for use by the Selectmen of Wells, and it is provided here for background information on the issues of rights to groundwater in Maine. This opinion should not be relied on for legal purposes, and readers with questions on this issue should consult their own attorney.

April 17, 2009

VIA EMAIL, FAX, AND REGULAR MAIL

Ms. Jane Duncan, Town Manager
Town of Wells
P.O. Box 398
Wells, ME 04090-0398

RE: Petition for Rights Based Water Extraction Ordinance

Dear Jane:

You have asked for our opinion regarding the "Wells Water Rights & Local Self-Government Ordinance" (the "Ordinance"). The Ordinance was submitted to the Town as a citizen's petition and its circulators requested that it be put on the ballot at the June 9, 2009 town meeting.

At their April 7, 2009 meeting, the Board of Selectmen considered the question of whether they should put the petitioned Ordinance on the town meeting warrant. After much discussion and hearing from proponents of both sides of the issue, the Board ultimately refused to do so after a 3-to-2 vote.

I offered a verbal opinion at the April 7, 2009 meeting regarding the Ordinance's legality and provided the Selectmen with an overview of their statutory duties in responding to the petition. You have asked that I memorialize my comments in writing and explain my reasons for concluding that: (1) the Ordinance would likely be found illegal if challenged; and (2) the Selectmen would be acting reasonably if they refused to put the Ordinance on the town meeting warrant.

For the reasons that follow, it is our opinion that the Ordinance violates established federal and state constitutional principles, Maine law, and the Town's Charter.

1. Possible Constitutional Violations

The Ordinance asserts various rights and restrictions that we believe conflict with the state and federal constitutions. Because the constitutions of the United States and Maine are the supreme law of the land, any local ordinance that conflicts with them is invalid.

Section 4 of the Ordinance provides, "[n]o corporation shall engage in water withdrawals in the Town of Wells." We believe that this prohibition is illegal and unconstitutional for a number of reasons.

First, as discussed in detail below, property owners in Maine have "absolute dominion" over the groundwater situated under their property. Second, by divesting a corporation of its ability to exercise an available property right (e.g., water extraction); the Town could be vulnerable to an illegal "takings" claim. Third, because the Ordinance expressly treats corporations differently than it does individuals, this potentially subjects the Town to equal protection and due process claims. The law views corporations as "persons." Accordingly, they are entitled to many of the same constitutional rights as are individuals.

For similar reasons, we do not believe that Section 5 would survive a legal challenge. It states, "No corporation doing business within the Town of Wells shall be recognized as a "person" under the United States or Maine Constitutions...nor shall the corporation be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution."

The Supremacy clause of the United States Constitution clearly provides that the Constitution is the paramount law of this country. Therefore, any state law or local ordinance that is inconsistent with it is invalid on its face. Section 5 purports to strip corporations of their legal personhood and to deny them various constitutional protections. We therefore believe it is invalid.

While Sections 4 and 5 of the Ordinance divest legally recognized entities (corporations) of their "personhood," Sections 7.1, 7.2, 7.5, and 7.6 provide "natural communities and ecosystems" (which are not recognized at law as "persons") with certain constitutional rights. Again, we do not believe that this provision would survive legal challenge.

2. Possible Violations of State Law

It is our opinion that the Ordinance's declarations that "all...water is held in the public trust as a common resource" for all Town

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residents (Section 2) and that all residents have “a fundamental and unalienable right to access, use, consume, and preserve” water within the Town (Section 5.1) conflict with Maine law.

Maine courts have held that surface waters of ten acres or more and tidal rivers fall under the “public trust” and that ownership of these water bodies resides in the citizens of the state. Groundwater, on the other hand, is subject to the “absolute dominion” rule.

Under the doctrine of “absolute dominion,” groundwater is the property of the owner of the land above it. Further, that landowner may intercept groundwater which would otherwise have been available to their neighbors with limited liability. While many states have rejected this rule in favor of other groundwater use and ownership theories, Maine’s Supreme Judicial Court specifically reiterated its adherence to the absolute dominion rule. See, Maddocks v. Giles, 728 A.2d 150 (Me. 1999) (“We decline to abandon the absolute dominion rule... we are not convinced that the absolute dominion rule is the wrong rule for Maine.”)

Section 6(4), which precludes corporations from withdrawing water within Wells for sale outside Wells, may run afoul of Maine statute governing the bulk transportation of water. Title 22 M.R.S. § 2660-A prohibits transport for commercial purposes of more than 10 gallons of water beyond the boundaries of a municipality but establishes a number of exceptions to this rule. The Ordinance, on the other hand, establishes an absolute prohibition on such transport. Because the state statutory regime specifically governs the transport of extracted water from municipalities, it could be found to preempt the local Ordinance.

Section 7 makes violation of the Ordinance a criminal offence. While municipalities may make violations of their ordinances a civil offence, they cannot impose criminal liability as this power is solely within the jurisdiction of state and federal governments.

Section 7 also gives standing to any Town resident to compel the Selectmen to enforce the Ordinance. This is a potential violation of Maine law on a number of fronts. First, it is contrary to the concept of prosecutorial discretion which affords municipal officials the right to determine whether or not to proceed with enforcement actions. See, Herrle v. Town of Waterboro, 2001 ME 1, 736 A.2d 1159. Second, it is at odds with established principles regarding legal standing. In order to have standing to bring a lawsuit, a citizen must have suffered a particularized injury (meaning one that is distinct from any injury experienced by the public at large.) See, Nelson v. Bayroot, LLC, 953 A.2d 378, 382, 2008 ME 91, ¶ 10. Additionally, case law suggests that only municipalities, and not private citizens, have standing to initiate proceedings to enforce municipal ordinances. See, Herrle at 1162, ¶ 11.

¹ In Maddocks, owners of property adjacent to a gravel pit brought an action alleging that excavation activities caused an underground spring flowing beneath their land to run dry. The court recognized that while there have been attempts to change the absolute dominion doctrine in Maine, the Legislature has yet to act in this regard. The Legislature created a Water Resources Management Board to undertake a comprehensive study of water law in Maine. That Board suggested that the Legislature adopt the “reasonable use principle” instead of the absolute dominion rule. The Legislature, however, chose to leave the common law as it stands.

² Preemption is a well-established rule of law whereby if Congress (federal) or the Legislature (state) has enacted legislation on a particular subject matter, that law shall be controlling over any state or municipal laws on the same subject, if the enacting legislative body intended to occupy the field in that area.

Sections 7.4 and 7.6 of the Ordinance purport to limit the ability of either the state or federal government to preempt it. We believe that such a limitation is contrary to the well-established law of preemption. Section 7.4 further provides that if other levels of government attempt to preempt the local Ordinance, the Town make take steps to secede from the State of Maine.

Section 7.6 makes federal and state officials who issue a permit to any individual or corporation, contrary to the terms of the Ordinance, liable for compensatory and punitive damages. We believe that this provision conflicts with Maine tort claims immunity, which protects government officials from liability if they are acting within the scope of their duties.

3. Possible Violations of the Town’s Charter

We believe that certain provisions of the Ordinance conflict with the Town’s Charter (which becomes effective on July 1, 2009) and would therefore not likely survive legal challenge.

Section 7.8 of the Ordinance prohibits the Selectmen from “taking any action to annul, amend, or overturn [this Ordinance], unless such action is approved by Town Meeting at which two-thirds (2/3) of the residents of the Town attending the Town Meeting approve such action.”

This provision conflicts with Section 2.06(4) of the Charter, which provides that the Board of Selectmen shall have the power “to enact, alter and repeal ordinances... unless otherwise restricted by law or this Charter.” [emphasis added].

The “law” referred to in Section 2.06(4) of the Charter refers to state or federal law, not to local ordinances. Maine law is clear that a municipality’s charter “is the organic law of the corporation, being to it what the constitution is to the state, and the charter bears the same general relation to the ordinances of the [town] that the constitution of the state bears to the statutes.” Accordingly, all local ordinances must comply with a town’s charter and “can no more change or limit the effect of the charter than a legislative act can modify or supersede a provision of the constitution of the state. Consequently, an ordinance violative of or not in compliance with [a town’s] charter is void.” See, Farris ex rel. Anderson v. Colley, 145 Me. 95, 99, 73 A.2d 37, 39 (Me.1950).

While Section 2.12(4) of the Town Charter limits the Selectmen’s power to enact, alter and repeal ordinances regarding groundwater protection in that such action requires town meeting approval, Section 7.8 of the Ordinance requires a vote of at least 2/3 of those in attendance to amend or alter the Ordinance. The Ordinance’s requirement for approval by a super-majority conflicts with the Charter because it only requires a simple majority for passage. The Charter does not expressly indicate that only a simple majority is necessary, however, it is implicit. Section 11.05(2) states that town meetings are governed by applicable provisions of state law found in Titles 30-A and 21-A of the Maine Revised Statutes. These provisions, when read together, indicate that only a simple majority is necessary for passage of secret ballot referenda. See, 21-A M.R.S. § 743(4); 30-A M.R.S. §2528.

Based on the foregoing, we believe that Section 7.8 of the Ordinance conflicts with the Town’s Charter and would likely be found to be void, if challenged.

4. When May the Municipal Officers Refuse to Put a Petitioned Article to a Town Vote?

Maine law permits municipal officers to refuse to act on petitions submitted to them if it would be reasonable to do so. See, 30-A M.R.S.A. §§ 2528(5) and 2521(4). Such a refusal must be objectively reasonable as a matter of law and not based on the municipal officer’s subjective views. It is objectively reasonable to refuse to put forward a petition if it requests something illegal. See, LaFleur, Atty. Gen. v. Frost, 146 Me. 270, 290 (1951) (the Law Court held that Portland’s municipal officers could not be compelled to submit an ordinance to voters that would be legally invalid if ratified by the town’s legislative body.)

While only a court of competent jurisdiction can ultimately determine the legality of the petitioned Ordinance, for the reasons stated above, it is our opinion that it violates well-established constitutional principles, Maine law, and the Town’s Charter. Accordingly, we believe that it was legally reasonable for the Selectmen to refuse to put the Ordinance on the town meeting warrant.

Please feel free to contact me should you wish to discuss this matter further.

Very truly yours,
Leah B. Rachin

LBR/mc

³ 30-A M.R.S.A. § 2528(5) states, “[b]y order of the municipal officers or on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall have a particular article placed on the next ballot printed or shall call a special town meeting for its consideration...”

30-A M.R.S.A. § 2521(4) provides, “[i]f the selectmen unreasonably refuse to call a town meeting, a notary public may call the meeting on the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10.”

MaineSBDC@SMRPC

The past six months have been the most challenging in the seven years I have been working as a business counselor here in York County. Many businesses that were already having cash flow difficulties were pushed to their limits and some beyond. Many small businesses have tried to refinance during the past six months, but very few have been able to demonstrate the ability to repay the debt with declining sales and profits. One of the most effective tools available is cash flow management training which has helped many businesses squeeze the maximum profit out of the declining sales. The process of developing a Cash Flow Worksheet is based upon utilizing three years of sales and expense history to develop seasonal patterns and trends in costs. The three years of history provides reality based projections for the coming twelve months. Next, monthly comparisons of actual experience versus projected performance provide monthly information to base current management decisions rather than waiting until the year end. This pro-active process maximizes results from existing sales.

The second strategy that helps businesses survive in tough times is to maximize the marketing/advertising/sales efforts of the business. When sales start to slip managers tend to “shoot” the salesman and cut the advertising budget. A better approach is to contact your potential clients (and existing clients) to be sure you are serving their needs as fully as possible. Besides, if you are hiding under a rock waiting for the economy to turn around your competitors are banging on doors trying to replace you. Stay as active as possible during a down turn in the economy. Be the aggressor, not the victim of a more aggressive competitor. Try to capture as many new clients as you can during a slower economy. When the economy starts to rise

increased your market share. Finally, there is some very good news in York County during these difficult times. Many businesses have been placed on the market and many are finding willing buyers who have the ability to finance the purchase and can bring new capital to revitalize old businesses. Although the economy has made it difficult for many small businesses, there are a number of businesses who have trimmed their operating costs. As the economy turns around, these businesses and the many others, will be in a very strong position to grow. As you move around the county notice all of the public improvements and the private development efforts underway. This economic activity generates jobs. York County has had a few high-profile, large employers close their doors. Many of these people will have to return to school or other training facilities to build new skills.

It will take the economy a while to absorb all of these unemployed people, but as it is able to do so, the economy of York County will rebound. At this time of year we can also focus on our tourism industry. Although gasoline has recently moved upwards again, it is still much less expensive than last summer. If the weathermen (and women) cooperate, a strong summer season will also help York County. Lately, there are a few positive indications that we may have already seen the worst of it. Employment is a trailing indicator, so when we see unemployment begin to decline, we should be a few months into our recovery. A strong summer tourist season, coupled with the stimulus construction projects and good weather will help; at least temporarily.

TRANSPORTATION HIGHLIGHTS

- ◆ SMRPC has been assisting Sebago Technics of Westbrook Maine, with the South Berwick Feasibility Study. The purpose of the Study has been to evaluate strategies that will alleviate congestion and improve safety in the downtown area of South Berwick where State Route 4 and State Route 236 merge to form Main Street. The Study is being funded with federal funds allocated through KACTS, the Metropolitan Planning Organization (MPO) for the urbanized area of Kittery.
- ◆ This summer SMRPC staff, with assistance from the Greater Portland Council of Governments (GPCOG) will start work on developing a Corridor Management Plan for the Pequawket Trail Scenic Byway. The Plan will identify and discuss the byway's intrinsic qualities, explore visitor needs and expectations, and discuss how to promote the byway while protecting its features. Ultimately, the Plan will lay out the resident's long-term vision for the corridor.
- ◆ The Route 113 Corridor Commission, represented by the towns of Standish, Baldwin, Hiram, Brownfield and Fryeburg and staffed by SMRPC and GPCOG, have been working diligently behind the scenes to ensure the successful restoration the Mountain Division Rail Line. Over the past year they have organized a meet and greet for state and local elected officials, invited rail consultants and industry professionals to information sharing meetings, and on August 1, 2008 held a ceremony to celebrate the State's purchase of the final portion of right of way between Fryeburg and Portland.
- ◆ Over the past year, staff has been assisting the Town of Fryeburg in developing a Bicycle Pedestrian Master Plan. The plan identifies areas in the village where expanding the existing bicycle and pedestrian network will improve safety and enhance connections between the town's parks, public amenities, and businesses. Recommendations include retrofitting existing roadways with paved shoulders or bike lanes, repairing existing or constructing new sidewalks, installing crosswalks and lighting, designating certain roadways as official bike routes, and implementing a number of policy proposals.
- ◆ The ME/NH Traffic Incident Management Group has been keeping staff busy with a number of projects during the last year.
 - ◆ A call tree for circulating information to the region's police departments regarding any major traffic incident occurring on I-95 or one of Southern Maine's other major corridors (during and after the incident) has been developed. Tests of the call tree were successful, and many towns have already used it. Maps developed by the municipalities highlighting detour routes will be distributed during the coming months and will be a valuable supplement to the call tree.
 - ◆ Under the direction of the Group, SMRPC applied for, and received, a grant to improve communication interoperability (the ability for public safety personnel from multiple agencies and states to communicate with each other using common radio channels). The grant was used to program the radios of participating police departments with mutually agreed upon radio frequencies, and provide training on CONOPS procedures.

UNITED STATES CENSUS 2010

United States Census 2010

In 2010, the U.S. Census will define who we are as a nation. Taken every 10 years, the census affects political representation and directs the allocation of billions of dollars in government funding. As a 2010 Census partner, SMRPC is helping to educate our region about the importance of participating in this historic event and help ensure that no one is left uncounted. You can help your community receive the fiscal and social benefits to which it is entitled. **Achieving a complete and accurate 2010 Census is in our hands.**

SMRPC's Senior Planner, Jamie Oman-Saltmarsh, is serving on Maine's "Complete Count Committee" for the 2010 Census. The Complete Count Committee (CCC) is already at work planning 2010 census kick-off activities. The primary objective of the CCC is to encourage and motivate all residents in a community to participate in the 2010 census in order to achieve an accurate and complete count. Since an undercount of population in a community translates into loss of federal funds, the CCC is devising community outreach strategies and awareness campaigns to engage all residents in their communities to take part in the 2010 Census. Hosting community and/or cultural events and encouraging residents to fill out their census questionnaires and mail them in is the primary goal of the CCC.

2010 Census Timeline: Key Dates

Spring 2009: Census employees go door-to-door to update address list nationwide.

Fall 2009: Recruitment begins for census takers needed for peak workload in 2010.

February – March 2010: Census questionnaires are mailed or delivered to households.

April 1, 2010: Census Day

April – July 2010: Census takers visit households that did not return a questionnaire by mail.

December 2010: By law, Census Bureau delivers population counts to President for apportionment.

March 2011: By law, Census Bureau completes delivery of redistricting data to states.



IT'S IN OUR HANDS



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COMMISSION

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