

SELECT BOARD MEETING
Town of Southwest Harbor
Town Office & Via Zoom*
6:00 p.m. ~ Tuesday, July 9, 2024

AGENDA

1. CALL TO ORDER:

2. ROLL CALL:

A. Excused Absences *(if any)*

3. ADOPTION OF AGENDA: *Request of the Town Manager for a motion to adopt the agenda as presented.*

4. APPROVAL OF MINUTES: *Request of the Town Manager for a motion "to approve the minutes of...."*

A. May 28, 2024 – SB Minutes with corrections

B. June 11, 2024 – SB Minutes with corrections

C. June 25, 2024 – SB Minutes

5. APPROVAL OF WARRANTS:

6. REGULAR BUSINESS:

A. Appointment Confirmation:

a. Harbormaster: *Request of Town Clerk to confirm Town Manager appointment for Robert Leavitt as Harbormaster.*

B. Anne Napier Storm Water Drainage: *Request of SB for Scott Alley & Town Manager to re-look at property and report back to SB.*

C. Select Board Priorities List: *Request of James Vallette to review, discuss & update if needed the SB priorities list.*

D. Solid Waste Task Force: *Request of James Vallette to discuss the next steps concerning the SWTF.*

7. LIAISON REPORT:

8. MANAGER REPORT:

9. SUGGESTIONS FOR THE NEXT REGULAR MEETING: *No action will be taken, other than to place the requested item on the next agenda.*

* To access the meeting using Zoom, please click the meeting link on the home page of the Town's website www.southwestharbormaine.org.

10. NEXT MEETING DATE: *Adoption of a motion to confirm the date of the next meeting for Tuesday, July ^{23rd} at 6:00 p.m. in the Town Office meeting room.*

11. ADJOURNMENT:

Manager's Memo

To: Southwest Harbor Select Board
From: Marilyn J Lowell, Town Manager
cc: Staff, Media, Other Interested Parties
Date: 7.5.2024

Re: **Select Board Meeting of July 9, 2024**

Items To Bring with You

To save paper and staff time, we have not copied the following document, Anne Napier Storm Water on 6.25.2024, since you received it previously. If you need another copy, please call the Manager, Marilyn Lowell, at 244-5404 or email her at manager@southwestharbor.org.

CALL TO ORDER – 6:00 P.M.

Excused Absences

At this time, no Select Board member has told us that they will miss the meeting. However, should that happen, it is best to pass a motion excusing anyone who tells us that they will be unable to attend.

REGULAR BUSINESS

Appointment Confirmation: I respectfully suggest passage of a motion to appoint Robert Leavitt as Harbormaster for a term effective until June 30, 2025.

Anne Napier Storm Water Drainage:

Scott & I discussed the drainage issue more thoughtfully and are suggesting 2 options. I have added a page with the information for both options in your packet. I contacted Dan Norwood, who is the caretaker for the Briggs properties. He was unable to meet with me until after the 4th to get a better understanding of the situation. He will then discuss with the family the situation.

Select Board Priorities List: I have added to your packet the latest priority list for the SB to review and discuss as a whole. Please look over and bring questions &/or suggestions to the meeting.

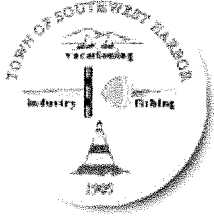
Solid Waste Task Force: Jim asked to discuss the next steps of the SWTF. There is work to be done regarding recycling and following through with the SW Ordinance.

NEXT MEETING DATE

You have previously scheduled your next meeting for Tuesday, July 23rd at 6:00 p.m. in the Town Office meeting room. Should you wish to keep with this same schedule, I respectfully suggest passage of a motion to confirm the date of the next meeting for Tuesday, July 23rd at 6:00 p.m. in the Town Office meeting room.

ADJOURNMENT

See You Tuesday!



SELECT BOARD MEETING
Town of Southwest Harbor
Town Office & Via Zoom*
6:00 p.m. ~ Tuesday, June 25, 2024

Minutes

- 1. CALL TO ORDER:** Ball called the meeting to order at 6:00p.m.
- 2. ROLL CALL:** Chair Carolyn Ball, James Vallette, Noah Burby, Town Manger Marilyn Lowell, Town Clerk Jennifer LaHaye all present in person. Vice Chair Johnson attended by zoom.

A. Excused Absences: Chapin McFarland excused.

- 3. ADOPTION OF AGENDA:** *Request of the Town Manager for a motion to adopt the agenda as presented.*

Burby motioned to amend the agenda to table the A.D.D discussion until a later date. Seconded by Johnson. Vote: 4-0-0.

- 4. APPROVAL OF MINUTES:** *Request of the Town Manager for a motion "to approve the minutes of...."*

A. May 28, 2024 – SB Minutes

These minutes will be tabled until the next meeting. Several more changes were asked for.

B. June 11, 2024 – SB Minutes

These minutes will be tabled until the next meeting. Several changes were asked for.

C. June 13, 2024 – Emergency Executive Session Minutes

Burby motioned to accept the emergency executive session minutes. Seconded by Johnson. Vote: 4-0-0.

- 5. APPROVAL OF WARRANTS:**

Town Payables: W#0613, 0620

Trust & Agency: W#126, 127

Conservation: W#0625

Town Payables: W#132

School Payables: W#125, 129, 130

School Payroll: W#128

Main Street Project: W#131

Burby motioned to approve the warrants as presented. Seconded by Vallette Vote: 4-0-0.

- 6. APPOINTMENTS:**

A. Associate Conservation Commission Member: *Request of Town Clerk to appoint Kathryn Strand as an Associate Conservation Commission Member.*

Vallette motioned to appoint Kathryn Strand as an Associate Conservation Commission Member for a term effective until June 30, 2027. Seconded by Burby. Vote 4-0-0.

7. REGULAR BUSINESS:**A. Anne Napier Storm Water Drainage:** *Request of SB for Scott Alley & Town Manager to re-look at property and report back to SB.*

Manager Lowell reported that she and Scott Alley have visited Anne Napier's property again. Lowell presented a plan that could help eliminate the drainage concerns. The plan includes an elbow on the base of the culvert so that it can be positioned to direct water away from the fence. Lowell suggested filling in the hole that has been made by the water with crushed stone and adding something around the area of the fence post so that it does not erode any more. This could be done at a lower cost than Anne Napier's purposed solution presented in a prior select board meeting.

Anne Napier was present in person. Napier reported prior to purchasing the home in 1979's she researched the property and at that time she had not had any issues. Due to her earlier profession, she reports being knowledgeable in drainage. Including knowledge of deed and title issues. She reports the deed to her property has no easement to the property whatsoever that allows the town to do any drainage on her property. Napier disagrees with many statements made in Alley's written correspondence to the select board. There was no erosion or issues when she originally bought the property. Several members expressed being in favor of reaching an agreement and is a good start to address these concerns. Napier is not in favor of the newly presented plan from Lowell and Alley. Vallette noted that the plan presented suggests an alternative. Johnson noted this could mitigate any further damage to Napier's property. Vallette noted the town should check in with the abutting neighbor before moving forward on *any* plan. Members of the select board agree with this suggestion. Manager Lowell will reach out to Mr. Toby Briggs, the abutting neighbor. Dan Norwood is believed to be the caretaker of Mr. Briggs' property. Napier told the board that she is ready to take legal action if she feels necessary. She will not grant the town an easement to her property if her abutting neighbor does not agree with Napier's purposed plan.

B. MMA Legislative Policy Committee Ballot: *Request of the Town Manager for a motion to select and vote for TWO candidates for the MMA Legislative Policy Committee.*

Johnson motioned to authorize the Town Manager to mark the official MMA ballot with the Select Board's two choices for the Legislative Policy Committee, Carolyn Ball of Southwest Harbor, and Kathleen Rybarz of Lamoine. Seconded by Vallette Vote: 4-0-0.

C. Vulnerability Assessment: *Request of Carolyn Ball to give information on Vulnerability Assessment from ZOOM call with Gulf of ME for research.*

Ball noted she had participated in a Zoom conference call with the Gulf of Maine Research Institute. Mount Desert will be completing their vulnerability assessment first as their grant money will be granted in November. Members of the select board reviewed areas that should be focused on in their vulnerability assessment. Members reviewed the "project overview" provided in the packet. The following areas were discussed:

- Coordination with Acadia National Park in relation to deadwood within the woods, and a wildland fire assessment
- Marine Conditions / Coastal flooding/ Invasives – marine resources
- Vulnerable populations (elderly)
- Potential Funding Mechanisms for shared town vulnerabilities

D. Salt Bid FY24/25 Winter Pricing: *Request of Town Manager for Selectboard to approve Salt Bid for 24/25 winter pricing.*

Johnson motioned to accept Southwest Harbor's salt bid price of \$75.60 per ton for FY24-25 season. Seconded by Burby. Vote: 4-0-0.

E. EV Charging Stations: *Request of Town Manager to give SB update of information from Titan Energy on EV Charging Stations.*

Manager Lowell presented the information she obtained from Titan Energy. She noted the electric bill continues to increase. Currently the EV charges are free to the public. New units could charge faster and be more efficient. Through discussion, it was learned the electrical line may need to be changed to support any new charging units. Three-phase would likely be needed. Suggestions of possibility of seeking a permit to use the EV charging stations was discussed.

8. FINANCIAL REPORTS: *Presentation of the monthly Budget Variance Report, Revenue Variance Report and Reserves Report.*

Manager Lowell presented the financial reports. Things continue to look good. The Highway Department was at 91.1% at the end of May. This is due to the maintenance and vehicle repairs. Overall, the municipal budget is at 81.8%. The check investment income that we could not put back into the CD's will show up on the June report. The CIP money held at the Bar Harbor Banking and Trust is also doing well.

9. LIAISON REPORT:

A.D.D. ~ Vallette reported that the discussion on the agenda was postponed, as there are still things that needed to be sorted out before Tony can speak to the board to discuss a potential plan with a hazardous waste facility. This could possibly happen in August.

10. MANAGER REPORT: See attached report.

More information added to the manager's report:

~The Town received a bill from Goodwin's for the water main transfers. The Water & Sewer District has paid the bill, but the Town will reimburse them. Johnson noted a concern for the water quality of those water mains, as the water just sits there. She has tried to reach Steve Kenney but has not heard back from him.

~BCM Trucks have been parking overnight at the Manset lot without permitting. The Deputy Harbormaster is currently collaborating with them. If they continue to leave the vehicles in the Manset lot overnight without obtaining the proper permit the vehicles will be towed.

~Chief Chisholm will be meeting with ISO (Insurance Services Office) the second week of July. Manager Lowell explained fire departments receive an ISO rating; this is to score a department's ability to protect the community. Chisholm will work with ISO to provide proper documentation needed.

~Lowell discussed meeting with Annaleis from Olver Associates, they reviewed Harbor Ave., and Shore Road. Lowell discussed a two-step process for Harbor Avenue, this project would need to be bonded. The stairs at the end of Harbor Avenue were discussed. Lowell found concerns for the safety of the stairs, and it being a liability for the town. Johnson expressed strong concern for the stairs being removed and importance of improving and providing public access down to the shore. Members discussed various ideas of what needed to be done with the road. Lowell is awaiting quotes from Annaleise.

~Lowell is in the process of obtaining an extra speaker to use at the select board meetings.

~Town Office employees are requesting to close the office the day after July 4th. Due to the State closing their offices. Employees are willing to use their own time for this closure. Tremont is also closing that day and offering their employees the chance to use their time or work if they wish. Many of the state resources will not be available to the employees.

Burby motioned the Southwest Harbor Town Office close July 5th, 2024, to public services but open to employees if they choose to work. Seconded by Vallette. Vote: 4-0-0.

11. SUGGESTIONS FOR THE NEXT REGULAR MEETING: *No action will be taken, other than to place the requested item on the next agenda.*

- Receive an update on the Emergency Management Plan.
- Review Priorities, and Mini Strategic Plans

12. NEXT MEETING DATE: *Adoption of a motion to confirm the date of the next meeting for Tuesday, July 9th at 6:00 p.m. in the Town Office meeting room.*

Burby motioned to confirm the date of the next meeting for Tuesday, July 9th at 6:00 p.m. in the Town Office meeting room. Seconded by Johnson. Vote: 4-0-0.

13. EXECUTIVE SESSION: 1 MRSA 405 (6)(A) to discuss a town manager candidate.

Personnel Matter: *Possible adoption of a motion for the Select Board to find that public discussion of this personnel matter could be reasonably expected to violate the individual's right to privacy, and therefore, to go into executive session to discuss the employment of an individual, as permitted by 1 MRSA.*

Burby motioned the Select Board go into executive session at 8:37pm pursuant to 1 MRSA 405 (6)(A) to discuss a Town Manager candidate. Seconded by Johnson. Vote: 4-0-0.

Johnson motioned the Select Board exit and adjourned executive session at 8:43pm. Seconded by Burby. Vote: 4-0-0.



Town of Southwest Harbor

1 July 2024

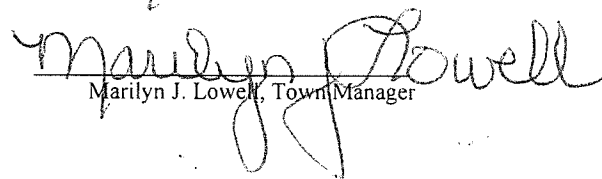
To: Select Board

Re: Town Manager's Appointments

The following appointment(s) made by the Town Manager.

Robert Leavitt Harbormaster

Submitted by:


Marilyn J. Lowell, Town Manager

138 Clark Point Road Storm Water Drainage Issue

OPTION A:

With this option an elbow would be placed at the end of culvert, diverting water away from the fence area and connecting it to a 150' long drainage pipe, which would be buried. At the culvert end, the area would be filled, and support material would be placed around the fence post to prevent more erosion. The exiting end of pipe area would be reinforced with ground mating, gravel/crushed stone, and covered with loam, to help prevent further erosion.

The Town would pay an amount up to \$3,000 for labor (\$1,200), stone, gravel, & loam (approx. \$1,700), with the work being completed by Acadia Stone. Ms. Napier would be responsible for the purchase/payment of the piping, approximately \$2,220 (which the Town could order to save on pricing) and receiving written permission from the Briggs family to allow the run-off, now being directed through a pipe, opposed to over the ground, into the currently used swale, on their property, and continue to the ocean.

OPTION B:

With this option an elbow would be placed at the end of culvert, diverting water away from the fence area. At the culvert end the eroded fencing area and hole would be corrected with gravel and stone to help with erosion and protection for the fence post. The exiting end of owners French drainage pipe area would be reinforced with ground mating, gravel/crushed stone, and covered with loam, to help prevent further erosion around the existing French drain.

The Town will pay an amount up to \$2,000 for labor (\$1,200), stone, gravel, & loam (approx. \$700), with the work being completed by Acadia Stone.

Mini Strategic Plans or Priorities List Update 5/28/2024

Housing/Rentals Lydia collecting information Mar 2024

Update: Possible fire Department land, Northern Light clinic, Housing authority land

Clean up drainage ditches Lawler Lane, Harbor Ave, Seawall by Hadlock Ln, the latter in conjunction with state DOT *Note: Harbor Ave needs to be rebuilt 5/28/2024*

Restore water views: Upper Town Dock, Manset with Harbor Master involvement

Mapping (GIS): Stormwater run-off map

Goog's Pond clean out and Chris's Pond: Discuss with for Conservation Com. Check for Hogweed

Create safe shoulders: Seal Cove Rd, Seawall Rd.

Deer population

Hiring staff: Expanding present staff, independent project consultant-for big projects

Explore combining public services where possible with other towns. Started with Tremont for law enforcement, May 2024

Emergency flashing light and sign at entrance to Fire Station (what is allowed by the state)

Explore extending sewer service: Water/Sewer District- Wood Street, Seal Cove Road, Manset to Seawall

Explore year-round daily bus service

Parking enforcement and kiosks for Manset, Upper Town Dock & Lower Town Dock (Hbr. Comm)

Marijuana \$ reimbursement used for healthy living

Emergency Management Plan: Presentation to Board needs to be arranged

Receive income from EV charging stations

~~Sell schoolhouse to Harbor House (conditional upon cont. use as comm, ctr.)~~

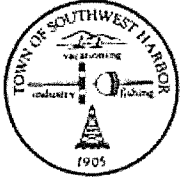
~~Fix restrooms~~

~~Compactor roll-off for cardboard (pending task force discussion)~~

~~Harbormaster building replacement: Plans underway~~

~~Protecting Town ROWs: signage purchased and needs to be placed~~

~~Restore water views: Norwood Cove completed~~



Town of Southwest Harbor

Office of the Town Manager

P.O. Box 745 ~ 26 Village Green Way

Southwest Harbor, ME 04679

Tel. 207-244-5101

Marilyn J. Lowell, Town Manager

www.southwestharbormaine.org

mmanager@southwestharbor.org

7.5.2024

TOWN MANAGER REPORT

~The new Harbormaster, Rob Leavitt has arrived as of Monday, July 1st. He is jumping in with both feet. Deputy HM Mike will be going over all that has been happening to catch him up. Scott & Mark along with Chalmers & Ocean House put the last of the finger floats in the water at Manset. Rob attended the Harbor Committee meeting on July 1st to meet everyone in person. Mike will go to his weekend coverage to give the 7 day per week coverage.

~Scott & Mark painted the cross walk by Great Harbor Marina & Upper Deck early Wednesday morning. They were not able to complete this one earlier since the road was being worked on. They will hopefully get some pavement to patch in the area at UTD where the old electric pole came out.

~Chief forwarded this comment from their Facebook page praising our dispatcher, Kevin.

From: Traci Patton <tpatton@swhpolice.com>

Sent: Tuesday, July 2, 2024 10:07 AM

To: John Hall <jhall@swhpolice.com>

Subject: Praise for Kevin

Ronda Reed Damon

So, I had a situation tonight with an elderly family member. It was pretty upsetting to them, and I had to call the SWH police station. Just want to say...I did Not know the dispatcher. But he was so kind, so caring, and so helpful. He actually asked me to call him back in a half hour. This IS why I live, where I live. Thank you SWH .PD ! I know things change, But I love our small town

This is the post from Ronda Damon ref Kevin being super helpful to her.

~I received an email from John Noll from ME Dept. of Agriculture informing us that the HMA grant application for the Manset area was approved. We will be getting service contracts in a few weeks. This grant was for \$15,000 and will be able to replenish the funds taken from expense lines in the harbor budget.

~Tom Chisholm has been attending the meetings for the 4th of July fireworks to keep pertinent depts. up to speed. Tom also completed his incident briefings plan and incident radio communications plan for the FD. There will be a fire truck on Manset corner, one a Main & Clark Point and the third at fire house for north side response needs. Thank you to all emergency crews.

~The Town Office is getting busier with registrations and fishing licenses. Taxes will be committed on the 8th. There were some issues with TRIO regarding some updates, so commitment was not able to be completed as planned on the 1st. Matt was able to reach out to about 20 residents to go over the

revaluation process with them opposed to them having to come on the 30th after taxes were committed. Residents can expect to start seeing tax bills in the mail late in the week of July 8th.

Respectfully,



Marilyn J Lowell

Town Manager

Marilyn Lowell

From: John Hall
Sent: Monday, July 1, 2024 12:32 PM
To: Marilyn Lowell
Subject: Chalking tires

Marilyn,

We did a little research on the chalking tires issue to answer the Board's Question from earlier this year.

There are two decisions in play here handed down in two distinct federal districts.

A 2019 decision by the 6th district federal appellate court found the practice to be a violation of the 4th amendment's guarantee against warrantless searches. This decision only applies in the four states comprising that particular district: Michigan, Ohio, Kentucky, and Tennessee. **So right now, 46 states are still using chalk quite legally, Maine among them.**

The second and most recent decision was handed down by the 9th district court in 2022 (there are 12 federal districts, 12 discreet federal benches) and covers nine states: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. In this more recent decision, a suit was brought by two individuals against the San Diego PD, based largely on the 2019 ruling, but in this case the court ruled AGAINST the plaintiffs.

Background: *Andre Verdun v. City of San Diego*

In *Andre Verdun v. City of San Diego*, Mr. Verdun challenged the City's ability to chalk tires in City parking spots under 42 U.S.C. § 1983 alleging that such action by the City violated the Fourth Amendment. The City has utilized tire chalk since at least the 1970s as an efficient and cost-effective way to determine a car's violation of time limits on City parking spots. The City's parking officer must place the chalk mark on every vehicle parked in a given area of the City; parking officers do not single out particular vehicles. Plaintiffs Andre Verdun and Ian Anoush Golkar each received at least one parking citation from the City after their vehicles were chalked and their cars were later found in violation of the City's parking time limits. The district court concluded that tire chalking constitutes a Fourth Amendment search, but that search is justified under the "administrative search exception" to the warrant requirement. Therefore, the district court granted the City's motion for summary judgment.

Because the 2019 decision was so controversial it continues to dominate google search results, but the fact of the matter is that tire chalking is only prohibited in the 4 states comprising the 6th district.

Kevin has started for this year and will be using the chalking method.

Chief John D. Hall

Southwest Harbor
Police Department
P.O.Box 1048

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