

Town Of Litchfield
Board of Selectmen
Minutes

Approved 9/12/16

Date: August 8, 2016

- 1.0 Convened at 6:30 PM; Pledge to Flag:** Selectmen Present: Chairman, Mark Russell, George Thomson and Tim LaChapelle. **Staff Present:** Trudy Lamoreau, Town Manager; Larry Nadeau III, Road Commissioner; Bryan Lamoreau, Transfer Station Manager; Stan Labbe, Fire Chief; Tina Gowell, Rescue Director. **Committee Members:** Richard Lane, Tom Szepsy, Lindsey Nelson, Cyndi Redmond, Road Committee; Bill Quackenbush, Solid Waste Committee; Pat Soboleski, Senior Director & Budget Committee; Renee LaChapelle, Board of Assessment Review. **Guests Present:** Diana Larrabee, Selena Nadeau, , Dori Upham, John Upham, Tristan Russell, Ken Lizotte, Vicki Russell, Chadd Hill, Jerry Bosse, George Rogers and Susan Ouellette.
- 2.0 Minutes of July 11, 2016 meeting** submitted for final approval. Moved by George, 2nd by Mark, to approve as presented - **passed 2 - 1.** **Minutes of the July 14, 2016 Emergency Meeting** submitted for final approval. Moved by George, 2nd by Mark, to approve as presented - **passed 2 - 1.** **Minutes of July 25, 2016 meeting** submitted for final approval. Moved by George, 2nd by Mark, to approve as presented - **passed 2 - 1.**
- 3.0 Reports and Correspondence:**
- 3.1 Town Manager Report:
- A) The Town Manager has signed up for a Municipal Law Class presented by Jensen, Bard, Gardner & Henry to be held at the Civic center in Augusta.
 - B) Susan Ouellette – Kuzzin’s Cove is present to notify the Selectmen that they have an enclosed deck on which they will be serving alcoholic beverages. She answered some questions concerning the soon to be opened restaurant.
 - C) Reported that we are receiving numerous comments from the public on the condition of the Libby Road
 - D) Reported that LRN Inc. has donated \$2833 in gravel material and labor primarily for the work that is being done at the Transfer Station.
- 3.2 Code Enforcement Officer/Plumbing Inspector:
Not Present.
- 3.3 Road Commissioner:
- A) MDOT will be closing the Plains Road Wednesday through Friday August 17 – 19 in order to change a large culvert at the East end of the Turnpike overpass. The Plains Road should be reopened August 20th.
 - B) The final touches on the closing of the Ferrin Road detour have been completed with the installation of the fence near Dian White’s garage.
 - C) The ground work at the Transfer Station is almost complete with just the laying of the reclaim remaining.
 - D) Work on the Huntington Hill Road will begin the week of August 22 with anticipation of a week of work with a possible road closure of less than 24 hours. Residents on the road will be notified when the road closing will be.
 - E) There were questions about the condition of the chip seal work on the Libby Road.
 - F) There was more discussion about the limited view at the intersection of the Hallowell Road and Rt. 197.
 - G) Meeting with Calderwood Engineering on August 25 at 8:00 am for a preliminary discussion about Upper Pond Road.
 - H) Discussed speeding issues on the Dennis hill Road with the State Police and KSO
- 3.4 Fire & Rescue:
- A) Discussion about the Bid process for the roof at the Purgatory Fire Station. Chadd Hill recommended that a contractor who would not be bidding on the project help write the RFP.
 - B) Discussion about developing, with permission from MDOT and help from the Public Works, and area for the fire trucks to pull off the road at a new fire pond on Rt. 197.

- C) Counseling and debriefing session was held following the fatal accident on Rt. 126
- D) There are eleven first responders with 2 in training and 35 firefighters currently.
- E) Drug overdose is becoming commonplace in Litchfield.
- F) The Ambulance Advisory Committee for the City of Gardiner is in the process of selecting a new billing company.
- 3.5 Emergency Management: No Report
- 3.6 Assessing Agent: Would like to schedule a workshop to discuss the upcoming Tax Commitment.
- 3.7 Transfer Station: See 3.3 C) above. More discussion about getting rid of the old brush pile.
- 3.8 Other Town Committees:
Town manager has distributed the Capital Improvement packet to all the departments in anticipation of beginning a discussion within the Budget Committee.
- 4.0 Agenda Adjustments:**
 - 7.1 Legal - MMA Opinion recorded meetings
 - 7.2 Legal - MMA Opinion employee medical records
- 5.0 Scheduled Business:**
 - 5.1 Game of Chance (Litchfield Farmers Club for Sept. 9, 10, and 11th 2016). **Motion by George, 2nd by Mark, to approve and sign the Game of Chance application. After discussion, it passed 3/0/0.**
 - 5.2 Did not show.
 - 5.3 Lindsay Nelson led a discussion on the issue of the existing evasive plants within, and next to, the Town's right of way. Consensus from the Board to continue with assessing the extent of the problem and the best way of attacking it, including budgetary issues.
- 6.0 **Unscheduled Business:** None.
- 7.0 Legal:**
 - 7.1 MMA Legal Opinion – See Attachment #1. The Chairman asked Tim if he could supply the Town with the video recordings of the June 27 and July 11 meetings. Tim indicated that he would supply the recording of the July 11 meeting, but the June 27 recording belongs to his wife and he does not have access to it.
 - 7.2 MMA Legal Opinion – See Attachment #2
- 8.0 Appointments/Resignations: none**
- 9.0 Warrants:**
 - 9.1 Town Voucher Warrant #3 was presented for \$102,557.82. **It was moved by George, 2nd by Tim, to approve, and sign, warrant #3 for \$422,413.65. After discussion, the motion passed 3/0/0.**
 - 9.2 Town Payroll Warrant #3 was presented for \$14,900.00. **It was moved by George, 2nd by Mark, to approve, and sign, Payroll Warrant #3. After discussion, the motion passed 2/1/0.**
- 10.0 Other Business:**
Jerry Bosse explained to the Selectmen the difficulty that he was having obtaining financing for his home building project. The prospective financial institution did an inspection of his work site and determined that his eave overhang encroaches on the side setback requirement by approximately 12 inches. They will not proceed without assurances that the Selectmen will not take enforcement action. **Motion by Mark, 2nd by George, to authorize the Selectman to approve, and sign outside of an open meeting, a “Will Not Act” Authorization concerning a possible setback violation by Mr. Bosse, on the condition that the CEO confirms the facts as presented**
- 11.0 Selectmen/Public Discussion/Communication:**

A) Tim requested that the Agenda for the next meeting include an item for discussion concerning disciplinary action of the Code Enforcement Officer, including possible termination. Tim made accusations of stealing, theft by deception and fraud by the CEO. When asked if he was requesting an Executive Session, Tim indicated that he wanted an open session. Based on a discussion with an MMA attorney, Tim did not agree with the Chairman's opinion that an open or closed session was entirely the decision of the employee. He further stated that he based his opinion on a discussion with Bill Dale of Jensen, Baird, Gardner, and Henry, the Town's legal representative. Mark asked Trudy to set up a meeting with Bill Dale to discuss the opinions that have been attributed to him and to determine the best course of action for the Town as it pertains to Tim's agenda request. Tim indicated that he had contacted Law Enforcement, but would not indicate who he contacted. He indicated that he would inform the CEO of his Law Enforcement contact prior to the next meeting.

B) Mark asked Tim to return the working papers of the 7/14/16 Executive Session. Tim indicated that, according to an MMA attorney, he did not have to and he would not return them. He indicated that his attorney was in possession of the papers. He did not identify either the MMA attorney, who advised him, or his attorney, who is in possession of the working papers.

C) Chadd Hill would like the Board to invite the three Litchfield Representatives to the RSU#4 School Committee to attend a Selectman's meeting to discuss the process of changing the method by which the RSU assessment to each community is determined. Other invitees might be the State Senator and the State Representative that represents the Town. Trudy will draft an invitation to the officials mentioned.

12.0 Future Agenda Items

12.1 D. Blocher Property

12.2 Street Lights

12.3 Old Mill Road Bridge

12.4 Gustin Road Bridge/Culvert

12.5 Job Description/Mission Statement for the Road Committee

13.0 Adjournment

Adjourned at 8:20 PM

Respectfully Submitted

Trudy Lamoreau, Town Manager

Mark Russell, Chairman

Attachment #1

----- Forwarded message -----

From: **Legal Services Department** <legal@memun.org>
Date: Wed, Jul 27, 2016 at 3:34 PM
Subject: FW: Litchfield - Legal Information Request - Video Taping Meetings
To: "t.lamoreau@litchfieldmaine.org" <t.lamoreau@litchfieldmaine.org>

Dear Trudy,

If a municipal official makes a recording of a municipal board meeting, I have no doubt that the recording would qualify as a "public record" within the meaning of Maine's Freedom of Access Act. This would be the case even if the recording were made on the official's own initiative using personal equipment (see 1 M.R.S.A. Section 402(3); also *Guy Gannett Publishing Co. v. City of Portland*, No. CV-92-858 (Me. Super. Ct., Cum. Cty., Sep. 9, 1992)). As a public record, the recording would be subject to public inspection and duplication (see 1 M.R.S.A. Section 408-A) as well as record retention requirements (see 5 M.R.S.A. Section 95-B(7)). There is, however, no explicit statutory requirement that the official disclose that he or she is recording the meeting.

I hope this answers your questions, Trudy.

Best regards,

Richard P. Flewelling, Assistant Director
Legal Services Department

Maine Municipal Association
60 Community Drive, Augusta, ME 04330
[1-800-452-8786](tel:1-800-452-8786) (in-state)
[207-623-8428](tel:207-623-8428)
[FAX 207-624-0187](tel:207-624-0187)
legal@memun.org

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From: Maine Municipal Association [mailto:webmail@memun.org]
Sent: Wednesday, July 27, 2016 2:24 PM
To: Legal Services Department <legal@memun.org>
Subject: Litchfield - Legal Information Request - Video Taping Meetings

Legal Services - Web Member Inquiry - Trudy - Lamoreau

Municipality	Lamoreau
Subject	Video Taping Meetings
Full Name	Trudy
Title	Town Manager
Email Address	t.lamoreau@litchfieldmaine.org
Telephone	207-268-4721
Fax Number:	1-207-268-2196
Address	2400 Hallowell Road
City/ Town	Litchfield
Zip	04350

Comments:

My question is this: If you are a Town Official and record a Selectmen's meeting does that recording become public information. Also if are acting in an Official capacity is it your duty to announce that you will be recording the meeting. Thank You.

Attachment #2

----- Forwarded message -----

From: Legal Services Department <legal@memun.org>
Date: Mon, Aug 8, 2016 at 12:06 PM
Subject: Litchfield - Personnel records
To: "t.lamoreau@litchfieldmaine.org" <t.lamoreau@litchfieldmaine.org>

Dear Trudy,

Since Litchfield operates under the town manager plan, neither an individual Select Board member nor the entire Select Board has authority to review personnel files.

[30-A M.R.S.A. §2635](#) requires the Select Board to act as a body (not individually) and also to “deal with the administrative services solely through the town manager . . .” Further, [30-A M.R.S.A. §2636](#), which sets forth the powers and duties of the town manager, including the authority in subsection 6 to appoint, supervise and control “all town officials whom the municipal officers are required by law to appoint, except members of boards, commissions, committees and single assessors; and appoint, supervise and control all other officials, subordinates and assistants, except that the town manager may delegate this authority to a department head and report all appointments to the board of selectmen. . .” In other words, it is you, Trudy, and not the Select Board, that has authority under state law to deal with town employees. Certainly this includes handling matters related to doctor’s notes, absences from work and the like.

I am not a HIPPA expert, but the answer to your question comes first and foremost from the laws above. If I had to guess, however, I’m sure we’d find a provision in HIPPA which essentially tells us that individuals lacking proper authority may not review employee medical information.

I hope that this clarifies matters.

Best,

Amanda A. Meader, Staff Attorney
Legal Services Department

From: Maine Municipal Association [<mailto:webmail@memun.org>]
Sent: Monday, August 08, 2016 11:16 AM
To: Legal Services Department <legal@memun.org>
Subject: Litchfield - Legal Information Request - Dr's Note (Hippa)

Legal Services - Web Member Inquiry - Trudy Lamoreau - Town of Litchfield

Municipality	Town of Litchfield
Subject	Dr's Note (Hippa)
Full Name	Trudy Lamoreau
Title	Town Manager
Email Address	t.lamoreau@litchfieldmaine.org
Telephone	207-268-4721
Fax Number:	207-268-2196
Address	2400 Hallowell Road
City/ Town	Litchfield
Zip	04350

Comments:

Good Morning: My question is this: I have employee who was out on Emergency Medical Leave with a Dr's. note. I am the Human Resource Officer for the Town . I was contacted by a Selectman who wants to review this employee's Dr's. note. I advised the Selectman that I don't believe he has the right to review the employees medical records according to the Hippa Law. Am I correct in understanding the Hippa Law? Thank you Trudy Lamoreau Town Manager