Selectmen's Discussion and Decisions
March 6, 2014

Selectmen present: Marie Harmon, John Norton, and Tom Hohn.

1. Discussed using Online Mooring for mooring applications and registrations.

   Concerns over fee collection. In order to assure that fees are collected, if residents choose to apply for a mooring permit online, then online payment would have to be a requirement.

2. Discussed weather events and Coastal billing analysis

   Developed a tool to look at how the Town has used Coastal's services this winter in order to better prepare for both upcoming spring storms as well as looking forward to future winters.

3. Executive session with Matt Tarasevich, Town attorney with Bernstein Shur, pursuant to 1 M.R.S.A. 405(6)(E).

4. Met with Matt Tarasevich concerning Town records.

   Attorney Tarasevich provided the Board of Selectmen with an update and a chronology of the ongoing attempts to retrieve town records from the former Road Commissioner and Solid Waste Director / current Fire Chief and EMA Director. The computer was the one Mr. Clarke returned to the Selectmen in November 2013. He presented an affidavit from the retained outside forensic computer expert and photographs of that computer that show the computer hard drive containing Town records had been removed and replaced with a blank hard drive after the Selectmen requested the return of the computer and its records. Mr. Tarasevich advised the Selectboard that the Town is legally required to safeguard certain Town records, including records that may be contained on computers and computer systems. The affidavit of the contracted forensic expert and photographs are public documents.

5. Meeting with Attorney Tarasevich, Coleman Clarke and his attorney Jonathan Goldberg regarding January 24, 2014 letter to Mr. Clarke placing him on notice of performance issues and offering him an opportunity to respond to those concerns. Mr. Clarke requested that the meeting take place in public session, after being advised of his right to have the meeting in executive session.

   First Issue: Selectmen and Chief Clarke discussed EMS reporting and communications with Maine Emergency Medical Services (MEMS), the State regulatory office for Maine EMS.

      In October Chief Clarke received a certified Notice of Complaint stating Maine EMS had initiated a complaint and the EMS Board would conduct an investigation concerning timeliness of run reports. The Notice required a written response be submitted to Maine EMS no later than 30 days after receipt of letter.

      Chief Clarke reported the letter was received, the issue was communicated to the Long Island EMS Lieutenant who gave a verbal directive to the Long Island QA/QI official to respond. Maine EMS did not receive a reply by the deadline. Documentation shows that MEMS attempted to contact Chief Clarke via telephone, e-mail and certified letter regarding this issue, and requesting a response to the Notice. Chief Clarke issued a new run reporting policy dated 12/21/2013, which satisfied Maine EMS. MEMS issued a Letter of Guidance to LI Fire and Rescue.

Chief Clarke stated many volunteer departments have similar compliance issues that are result of time pressures on volunteers caused by increasing regulations and day job work responsibilities. Selectmen stated they understood the time pressures on volunteers and appreciated their dedication.

Selectmen strongly objected that Chief Clarke sent an e-mail in mid-January to MEMS stating that his failure to respond to MEMS in a timely manner was caused by the Board of Selectmen. Selectmen stated that his access to department e-mail was not the cause of late response as MEMS had communicated with the Chief by certified mail and phone message in addition to e-mail. The Chief was restricted only during a two week administrative leave in mid-November and email access during that time was provided to the Deputy Chief. The Selectmen believed the Deputy Chief had provided the password to the Chief at the time of his re-instatement. Mr. Clarke did not explain why he did not attempt to respond to MEMS by mail, phone, fax or other means that did not involve concerns about e-mail access or the Selectboard.

Chief Clarke said that in January Curt Murley, the IT administrator, had difficulty forwarding e-mails from the Fire Chief email account to a private account. Selectmen stated that, while they had initially approved the request to have department e-mails forwarded to a personal account for the convenience of the Chief, that approval was rescinded by the Selectboard policy to require Town business be conducted on Town e-mail accounts.

Second Issue: Selectmen and Chief Clarke discussed missing town records and the laptop computer issued for Road Commissioner and Solid Waste Director business.

Selectman Norton recounted that on 8/23/2013, in a meeting attended by Town Counsel Rob Crawford, the Selectmen requested the Chief return a computer supplied by the Town for conducting Road Commissioner/Solid Waste Director/Fire Chief/EMA Director Town business. Mr. Clarke threatened he would erase all records before returning the computer. The Selectmen and town attorney warned him not tamper with the computer as it contained Town records. Selectmen offered independent technical support to extract only Town records and protect confidentiality of personal records. The computer was returned to the Town on Nov. 20. A subsequent review of the computer showed that its hard drive had been wiped entirely clean and appeared to have no information on it. The Selectboard thereafter authorize town attorney to retain a forensic computer expert in an attempt to recover the missing records from the computer. The forensics firm has reported that the computer was blank, the hard drive was blank and was not original, and the hard drive had been manufactured on 9/27/2013 and installed sometime after August 23, 2013. Selectman Norton asked Mr. Clarke to explain this.

Chief Clarke maintains that he was not directed to maintain specific records for any of his Town positions and he considered the computer to be a personal gift from the Town and as road and plow contractor all records he kept were his property. Chief Clarke stated that he gave the computer to an individual to remove his personal records before returning it to the Town. Chief Clarke stated that he was unaware that that individual replaced the hard drive. Mr. Clarke refused to identify who that person is and where the hard drive was currently located. The Selectboard reiterated that the hard drive and any town information on it did not belong to Mr. Clarke and that he must return it.

Jon Goldberg, Chief Clarke's attorney, stated that he believed that there were two issues: communications with MEMS and the computer hard drive. Concerning issues with MEMS, the situation has been resolved and had never been deemed serious enough by Maine EMS to incur disciplinary action. Concerning the wiped hard drive – he believes that Clarke did not understand that the computer was not a personal computer and not compensation for previous computers used for Town business. The Selectboard responded that this statement contradicts letters from Chief Clarke, in which he stated that the computer had been provided to him to do town work. Mr. Goldberg believes that Clarke gave his computer to an individual to just remove his personal information and that that individual gave it to another individual to do whatever was necessary to remove those records, which resulted in the replacement of the hard drive. Furthermore, weighing minor issues against a lifetime of service to the town, he believed that there were no good reasons to relieve him of his duties that he wishes to continue to perform and that issues such as these will not happen again.

The Selectmen stated that these were not two discreet issues, that they are evidential of a deteriorating relationship over a long period of time; that these issues are indicative of the behavior and attitudes of a town employee who had stated he would not work with the Board of Selectmen because of the work demands of his other jobs and his attitude towards current members of the Board. The statement that Chief Clarke did not understand the computer and its records were Town property was not accurate as Chief Clarke was specifically advised by Selectmen and Town attorney on August 23 the computer and its records were Town property and not to be tampered with.

Chief Clarke refused to disclose the current location of the hard drive, identify the person who removed it and refused to return it. He stated he had a box of paperwork in his office and offered to bring it to Town Hall. His attorney and the Board of Selectmen agreed that it would be beneficial to have that box brought to Town Hall. Chief Clarke returned with the box later that evening.

6. Selectmen held an executive session pursuant to 1 M.R.S.A. 405(6)(E) with the town attorney to discuss the Board's legal rights and responsibilities.

7. Met with Zoeth Rich, the Buildings and Wharves Supervisor, to discuss CIPs for the FY2015 budget.

   Decided to downgrade the proposed renovations to Town Hall and not submit it as a CIP.

   Police House renovations will focus on structural stability of the building.

   Discussed forwarding to Finance Committee the previously proposed but unapproved CIPs for a salt shed at the Town Garage and fixing the Generator Building floor.

   Approved CIPs for FY2014 – repointing the Marine Building and upgrading the VFW Hall windows – will be completed this spring.

8. Prepared FY2015 budget for the Finance Committee meeting.

Erin Crowley – Deputy Minute Recorder