

Approved @ 8/17/20 zoom mtg.

TOWN OF CASTINE
SELECTMEN, ASSESSORS & OVERSEERS OF THE POOR
MEETING MINUTES



Gordon D. MacArthur
Peter Vogell

DATE: Monday, August 3, 2020
TIME: 4PM (via ZOOM)
PLACE: Emerson Hall

PRESENT: Colin Powell, Chair; Gordon MacArthur & Peter Vogell, Selectboard members; Shawn Blodgett, Town Manager; Karen Motycka, Finance Officer and Susan Macomber, Town Clerk.
PUBLIC: Bobby Vagt, Brooke Tenney, Liz Parish and Eli Forman of the Castine Patriot.

Colin Powell opened the meeting at 4:00PM. Quorum was confirmed with Peter Vogell stating his presence; Gordon MacArthur stating his presence; and Colin Powell stating his presence. Colin asked if there were any additions or deletions to the Agenda: NONE.

Motion was made to approve the warrants, abatements, budget vs. actual and trial balance reports, bank reconciliations, excise tax collections and included a Disbursement Warrant to State of Maine agencies.

Peter Vogell made motion to approve the General Fund Warrant in the amount of \$29,306.46. Second by Gordon MacArthur. Colin asked for votes.

Peter stated yes to approve. Gordon stated yes to approve. Colin stated yes to approve. General Fund Warrant approved 3-0.

Gordon MacArthur made motion to approve the Water Dept Warrant in the amount of \$2,902.01. Second by Peter Vogell. Colin asked for votes.

Peter stated yes to approve. Gordon stated yes to approve. Colin stated yes to approve. Water Dept Warrant approved 3-0.

Gordon MacArthur made motion to approve the Disbursement Warrant for reports to the State of Maine Motor Vehicles, Inland Fishery & Wildlife and Animal Welfare in the amount of \$11,925.62. Second by Peter Vogell.

Colin asked for votes. Peter stated yes to approve. Gordon stated yes to approve. Colin stated yes to approve. Disbursement Warrant approved 3-0.

Gordon MacArthur made motion to approve the July 20, 2020 Selectboard Mtg minutes. Second by Peter Vogell. No discussion. Colin asked for votes.

Gordon stated yes to approve. Peter stated yes to approve. Colin stated yes to approve. July 20, 2020 Mtg minutes approved 3-0.

Item 1. Colin Powell introduced approving the Tax Commitment for FY 7/1/20 – 6/30/21. Karen Motycka, Finance Officer, addressed. Karen and Rob Duplisea of RJD Appraisals (Castine Tax Assessing Agent) recently worked through what is needed to commit taxes and set the mil rate. It is recommended that the mil rate be set at 11.4 which is the same as last year. Peter Vogell made motion to set the mil rate at 11.4 for FY 7/1/20 – 6/30/21. Second by Gordon MacArthur. No discussion. Colin asked for votes. Peter stated yes to approve. Gordon stated yes to approve. Colin stated yes to approve. 11.4 mil rate approved 3-0.

Item 2. Colin Powell introduced the Town Manager's Report: Shawn Blodgett read his report (see attached).
#4 Keep ME Healthy Grant Submission: Peter Vogell made motion to approve applying for the Keep ME Healthy Grant. Second by Gordon MacArthur. No discussion. Colin asked for votes. Peter stated yes to apply. Gordon stated yes to apply. Colin stated yes to apply. Apply for Keep ME Healthy Grant approved 3-0.

Item 3. Other Business as Required: NONE.

Communications: -Request, from Becky Blodgett, to use Backshore Beach for a family gathering on Saturday, 8/15th to celebrate and reminisce her mother, Patricia Simmons Blodgett. They will be burying Patricia's ashes at the Castine Cemetery in the Hooper-Simmons family plot. There will be an estimated 30 people, weather permitting. Peter Vogell made motion to approve the request with COVID19 restrictions (practice social distancing, encourage wearing masks when not eating and maintain group in a contained area). Second by Gordon MacArthur. No discussion. Colin asked for votes. Peter stated yes to approve. Gordon stated yes to approve. Colin stated yes to approve. Backshore Beach request approved 3-0.

Colin acknowledged the public present: -Brooke Tenney referred to the Census update mentioned in the Town Manager's Report and asked how the seasonal property owners process works. Shawn explained that there's a check list which is available and published by the US Census to help multi-homeowners navigate. In the long run, anyone who owns a seasonal home in Castine should complete this process as it will help Castine.

Past Actions: Gordon MacArthur said he would like to make a motion following up from updates in the Town Manager's Report, in regard to, the Noise Complaints Regarding MMA's State of Maine Training Ship. Gordon made motion to rescind action taken at Selectboard Mtg on 7/6 giving MMA 30 days to come into compliance with Zoning Ordinance section 6.21 and apply a \$100/day fine after 30 days if not in compliance. Second by Peter Vogell.

After consulting with Maine Municipal Association legal and Castine's legal team at Bernstein & Shur on whether or not Castine has legal authority over the operation of the Training Ship State of Maine, the consensus view from both legal teams is that Castine does not possess the authority to cite MMA for a violation under section 6.21 of the Castine Zoning Ordinance. Colin asked for votes. Peter stated yes to rescind 7/6 action taken. Gordon stated yes to rescind 7/6 action taken. Colin stated yes to rescind 7/6 action taken. Rescind 7/6 action taken towards MMA Training Ship State of Maine approved 3-0.

Selectboard Comments: None.

Upcoming Mtgs:

Monday, 8/17 at 4PM – Selectboard/Assessors & Overseers of the Poor Mtg.

No T/G Mtgs scheduled at this time due to COVID19. Colin mentioned we should have a mtg, even if it is a Zoom Mtg, to regroup with fall approaching and school back in session.

Gordon MacArthur motion to adjourn. Second by Peter Vogell.

Colin asked for votes. Gordon stated yes to adjourn. Peter stated yes to adjourn. Colin stated yes to adjourn. Approved 3-0.

Meeting adjourned at 4:16PM.

Minutes by Susan M Macomber, Town Clerk.



CASTINE MAINE U.S.A.

Shawn Blodgett
Town Manager & Code Enforcement Officer
Shawn@castine.me.us

MEMORANDUM

To: Castine Selectboard
From: Shawn Blodgett
Date: July 31, 2020
Re: Town Manager Report

1. Noise Complaints Regarding MMA's State of Maine training ship. Over the past two weeks, we have re-looked at our Zoning Ordinance, and then consulted with both Maine Municipal Legal and Castine's legal team from Bernstein Shur, regarding whether or not the Town of Castine has any legal authority over the operation of the Training Ship State of Maine. The consensus view from both legal teams is that Castine does not possess the authority to cite Maine Maritime Academy for a violation under section 6.21 of the Castine Zoning Ordinance. While Section 1.5 of the Castine Zoning Ordinance, Applicability, states "that this ordinance shall apply to all land and water areas within the Town of Castine", Section 6.1.B explicitly states that the "following LAND USE standards shall govern all permits and approvals issued by the CEO and Planning Board". Section 6.21, Noise, is a follow on LAND USE standard. Since neither the CEO, nor the Planning Board have anything to do with licensing, regulating or permitting the operation of the TSSOM and its operation is a maritime activity versus a land use, we do not believe, and both of our legal teams agree, that the town has the authority to cite Maine Maritime Academy regarding a reported noise violation by the State of Maine.

The immediate way forward on this issue will be to only enforce the performance standards on land uses or establishments where the town has a role in the issuance of permits. In the near-term (6 months to a year), Castine will have a choice to make as to whether another chapter on noise should be

Town of Castine Municipal Offices

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added to the zoning ordinance (outside of land use performance standards) or whether there is a requirement for a standalone noise ordinance to be developed.

2. Infrastructure Update. Eastern Court Street was largely completed on Friday, the 31st of July with the remaining hand work on the northern edge swale completed today, 03 August. The next project will be the repair of the gradient on the Wadsworth Cove ditches to ensure proper water flow and then the repair of the ditches on the upper end of eastern Madockawando Road for the same purpose. The Madockawando Road ditch repairs will be in preparation for the Madockawando Road (530 Lf) and Latour Street (710 Lf) paving projects which will be started within the next few weeks. Castine has also contracted to have repairs done to the rotting sections of the storage shed at Dyce Head Lighthouse. These repairs are ongoing and should be completed by this coming Friday, the 07th of August. We have now also received two bids on getting the painting completed on the lighthouse keeper's home and the storage shed. We will finalize these arrangements and get this project scheduled in the very near future.

3. Census Response Rate. Last week, I put out a statement regarding Castine's response rate for the 2020 Census. As of July 22, 2020, Castine's United States Census self-response rate was 26.2% compared to the State of Maine's overall response rate of 52.5%. Castine's self-response rate currently ranks 428 of the 488 cities and towns in the State of Maine. If any Castine resident has not yet responded to the Census, I ask that you take the time and respond today. It is quick and easy to do online at www.2020census.gov or by calling 1-844-330-2020. If one is a seasonal resident, instructions to complete the Census can be found on the Castine web page.

4. Keep ME Healthy Grant Submission. As sent to the Selectboard separately, on Friday, the 31st of May, I applied for \$6770.00 in grant funding with the Maine Center for Disease Control and Prevention to monetarily aid Castine in future COVID 19 prevention and education activities.

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Shawn Blodgett

From: Mary E. Costigan <mcostigan@bernsteinshur.com>
Sent: Thursday, July 23, 2020 5:25 PM
To: Shawn Blodgett
Subject: RE: Castine - Legal Information Request - Local Noise Ordinance versus Maritime Administration Vessel

Hi Shawn:

I agree with you that the performance standards in the zoning ordinance do not apply to activities on Training Ship State of Maine. In addition to what you stated below, section 6.1 of the zoning ordinance states that the CEO or the Planning Board shall consider the performance standards prior to issuing final approval of applications and there is no application involved here. Additionally, the noise standards clearly apply to land-based uses because of the references to "land use or establishment" and their lot lines. It is maritime issue, not a land use issue.

Please let me know if you have any further questions.

- Mary

Mary E. Costigan

Shareholder

207 228-7147 direct

207 774-1200 main

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From: Shawn Blodgett <shawn@castine.me.us>
Sent: Thursday, July 23, 2020 1:39 PM
To: Mary E. Costigan <mcostigan@bernsteinshur.com>
Subject: FW: Castine - Legal Information Request - Local Noise Ordinance versus Maritime Administration Vessel

EXTERNAL EMAIL

Mary,
See the below email string which starts with my query to Maine Municipal Legal. The issue at hand is whether the Training Ship State of Maine is governed by the Noise Section of Castine's Zoning Ordinance, specifically the noise section, Article 6, Section 21. Our zoning ordinance states that it governs all of Castine, both land and water. However, Article 6 states that the performance standards are "Land Use" standards that apply to "all permits and approvals" granted by the CEO and/or Planning Board. Since the Training Ship is obviously maritime and the town government does not permit, regulate or approve anything the ship does, I do not

believe this vessel is covered by our Zoning Ordinance. I have included a copy of our Zoning Ordinance. Let me know your thoughts when able.

*Very Respectfully,
Shawn*

Shawn Blodgett
Town of Castine
Town Manager and Code Enforcement Officer
shawn@castine.me.us
(207) 326-4502

From: Legal Services Department [<mailto:legal@memun.org>]
Sent: Thursday, July 23, 2020 9:37 AM
To: shawn@castine.me.us
Subject: RE: Castine - Legal Information Request - Local Noise Ordinance versus Maritime Administration Vessel

Dear Shawn,

I would probably need more information about the location of the vessel to be sure, but I do not think that the ordinance clearly applies to the activities conducted aboard the State of Maine vessel based on the information you provided. As you noted, while the ordinance governs both land and water, the performance standards only seem to apply to uses or development that requires a permit or approval under the ordinance. More specifically, the performance standards seem to only apply to land uses and the noise performance standard applies to a "land use" or "establishment" that is subject to permit or other approvals under the ordinance. I didn't see any provision in the ordinance that would clearly apply the performance standards to vessels docked at a pier, but there may be arguments that the standards apply to operations occurring at the pier or within the zone, if the zone in which the vessel is located includes the pier/water. On the other hand, I consulted with a colleague who is well versed in naval and maritime law (as an almost retired naval officer) and he mentioned that it is likely that the vessel and the drills that are conducted are exclusively governed by federal laws and rules. He suggested that the harbor master or the town manager contact the ship and discuss whether any accommodations can be made (i.e. limits on the hours the drills run) if the vessel will be conducting more drills.

In general, I would suggest that the town consult with the town attorney prior to issuing any notice of violation for this activity.

I hope this is helpful.

Best,

Breana N. Gersen, Staff Attorney
Legal Services Department

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

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From: Legal Services Department
Sent: Tuesday, July 21, 2020 4:20 PM
To: shawn@castine.me.us
Subject: Castine - Legal Information Request - Local Noise Ordinance versus Maritime Administration Vessel

MMA Legal Services has received your inquiry. It has been assigned to one of our attorneys, who will respond as soon as possible. Our response time may vary depending on the volume of inquiries, the nature and complexity of your inquiry, and current staffing. We appreciate your understanding and cooperation.

If you have a specific deadline, please let us know.

Thank you.

Regards,

Jackie Kresser, Administrative Assistant
Legal Services Department

Maine Municipal Association
60 Community Drive, Augusta, ME 04330
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From: Webmail
Sent: Tuesday, July 21, 2020 4:16 PM
To: Legal Services Department <legal@memun.org>
Subject: Castine - Legal Information Request - Local Noise Ordinance versus Maritime Administration Vessel

Legal Services - Web Member Inquiry - Shawn Blodgett - Castine

Municipality Castine
Local Noise
Ordinance versus
Subject Maritime
Administration
Vessel

Full Name Shawn Blodgett
Title Town Manager

Email Address shawn@castine.me.us

Telephone 207-326-4502

Fax
Number:

Address 67 Court Street

City/ Town Castine

Zip 04421

Comments:

Due to the COVID-19 pandemic, Maine Maritime Academy recently made the decision to conduct a pier side "cruise" with their training ship, The State of Maine, to get approximately 33 students required ship time in order to graduate them. Due to this, they were required to run certain ship systems which generated noise in excess of what is allowed by our town zoning ordinance performance standards. The noise section in Article 6 of Castine's Zoning Ordinance states that decibels are required to be beneath 50 decibels during the hours of 10 PM to 7 AM and cannot exceed 60 decibels from 7 AM to 10 PM. Following a deluge of complaints from 3 residents, I took 23 readings and found that the ship was out of compliance by an average of 3-5 decibels during the night time period. Article 1, Section 1.5 of Castine's zoning ordinance states that the ordinance shall apply to "all land and water areas within the Town of Castine". However, in Article 6 "Performance Standards" (where the noise limits are found), in Section 6.1.B it states: "The following Land Use Standards shall

govern all permits and approvals issued by the CEO and the Planning Board". The Training Ship State of Maine is owned by the Maritime Administration and loaned to the State of Maine. My question is if the local Code Enforcement Officer and Planning Board do not permit or authorize the operation of this federally owned ship on the pier that is in Castine, does the Town of Castine have the authority to cite Maine Maritime Administration for a noise violation? The ship is otherwise operated in accordance with Federal and State regulations and the Town of Castine does not govern this. Also, the existence of this ship (or one substantially like it) predates the adoption of Castine's zoning ordinance.

Inquiry ID: f64e8114-f86f-4f7c-9a7e-3d2a52e1730a
IP Address: 72.224.186.2