

Submitted by:

TOWN OF PHIPPSBURG  
SELECTMEN'S MEETING

Approved by Selectmen:

John M. Young  
Administrator

MINUTES  
July 26, 2006

*Meeting convened at 6:00 p.m. with Selectman Douglass (Chair), Selectman Perkins and Selectman Pye in attendance.*

**I. Review and Sign:**

1. Accounts payable and payroll warrants
2. Minutes from July 5<sup>th</sup> and 19<sup>th</sup>
3. Re-appointments

**All items reviewed and signed.**

**II. Meetings and Hearings:**

1. Meet with David Etnier, Deputy DMR, concerning shellfish water test issues and third party review.

**Selectman Douglass explained that the meeting was being held to discuss the DMR water testing program and the possibility of a third party review of the program.**

**Richard Lemont, Chair of the Shellfish Committee, explained that the harvesters are frustrated because many pollution issues have been corrected (i.e. overboard discharges), but DMR is unable to conduct the required shoreline surveys and water testing to get the affected areas open. These areas include Brigham's Cove, Parker Head Mill Pond and Dromore Bay. He felt the reply from Amy Fitzpatrick, DMR Water Quality Supervisor, that it would take 3 to 5 years to survey and open these areas was totally unsatisfactory. Mr. Lemont explained the corrective action that was taken in each area to correct pollution issues. He added that following the corrective action DMR increased the number of test sites. He said that the Town has jumped through every hoop and is still at the bottom of the pile.**

**Bob Cummings, Shellfish Committee Member, stated that a lot of money has been spent to clean up the Mill Pond and there is 1/2 million dollars of product a year in the pond. He recommended that DMR find out what the remaining issues are - and in less than 5 years.**

**Selectmen Douglass stated that every year the level of participation from DMR has been less and less.**

**Dave Etnier, Deputy Commissioner of DMR, replied that he has been working with Phippsburg for the last 12 years between being its State Representative and later the Deputy Commissioner of DMR. He remembered that, as a member of the legislature, one of his first jobs was going with Dick Lemont and Terry Watson to DMR. He also sponsored an, emergency bill to allow shellfish harvesters to conduct water testing for**

**DMR. He has worked 3+ years for DMR and feels that he has a good department and will defend the program and work with the towns. The letter from Ms. Fitzpatrick dated June 9<sup>th</sup> puts the Town of Phippsburg in context with the other 49 towns that have shellfish harvesting programs. However, he does know that DMR can do a better job. He asked that those attending give him some specific issues.**

**Mr. Lemont stated that it should not take more than a couple of hours to do a survey of Brigham's Cove to open it. There was a survey done in the Parker Head Mill Pond 10 years ago and most of the problems have been corrected. It doesn't seem right that after all this time, and the money that has been spent, that DMR can't take two days to survey the shoreline and come up with a final list of problems.**

**Selectman Douglass stated that we did what we were asked to do and now we have to wait 5 years to find out if we need to do more. It is apparent over the past couple of years that the time and effort from DMR has dropped off. He asked what has happened to the department (DMR) to make it less available. Nothing seems to be happening.**

**Deputy Commissioner Etnier replied that his people are busy dealing with red tide and pollution during the summer and there are personnel issues in trying to get everything done. He thought that Ms. Fitzpatrick was easily accessible to the harvesters because she is close.**

**Mr. Lemont stated that he thinks they still work fairly well with Ms. Fitzpatrick, but DMR attitudes have changed. They are still basically working with the same people, Jan Barter and Amy Fitzpatrick. He added that the attitude and morale in the lab itself is at bottom of the barrel (Mr. Etnier agreed to this comment). Mr. Lemont explained that we are not even maintaining the flats we have - we are losing them. The overboard discharge in Brightwater has been corrected and Jan Barter was notified last November. Parker Head Village has been dye tested and it came out fine.**

**Mr. Cummings stated that he has observed all the directors of the shellfish program and Paul Anderson was the most practical and personal director and got things done. The changes occurred after he left DMR and the next person, who lacked imagination, took over.**

**Terry Watson said that we really have an FDA representative running the program. FDA should be approving a water testing policy – not saying “do this and do that.” DMR should not have to consult with the FDA representative on every opening and closing. Someone has to step in and see if the DMR staff is doing their job.**

**Mr. Etnier replied that DMR has to be in compliance with the FDA and every year they go through the DMR facilities and review the program with a fine tooth comb. He stated that he or Ms. Fitzpatrick should be advised if there are specific concerns with DMR staff. He further stated that it is a very frustrating situation because it is not the private sector so personnel issues are more difficult to deal with.**

Selectman Douglass stated that he does not want to confuse cooperation with results. Ms. Fitzpatrick is easy to get along with, but we are not getting the end results we want.

Mr. Etnier replied that Brightwater is a case where DMR can do better. However, the rest of the shellfish areas have to be prioritized with all the other town's areas and DMR needs to try to maintain shellfish areas that are currently open.

Selectman Douglass mentioned that Brunswick seems to be having the same issues with DMR and Phippsburg is not the only municipality complaining. He added that Phippsburg has waited for DMR to get things sorted out and it has not happened.

Representative Percy stated that she has received complaints specifically about staff persons not responding quickly to concerns. Paul Anderson was right there to assist and now things don't get done in a timely or appropriate fashion. How do we get quicker results? Dick Lemont mentioned that the Phippsburg area DMR representative is Jan Barter.

Dave Etnier stated that there is some resentment from DMR Staff concerning the hiring of aides. Dick Lemont replied that it should not take 3 seasons to qualify the aides to do surveys and testing – he could do it in an afternoon.

Selectman Pye asked if Brightwater and the Mill Pond were due for surveys or annual reviews this year. Mr. Etnier replied that there was no excuse for not opening Brightwater, but the Mill Pond needs a full survey. Amy Fitzpatrick has asked DEP to help with a survey of the Mill Pond. Brightwater just needs a good quality test and report and he doesn't mind putting the pressure on for that.

Bob Cummings stated that most seasonal employees will not work for more than three years and it will supposedly take that long to train them. Dave Etnier replied that because of the benefits package and based on history the seasonal employees do come back year after year – it is financially beneficial for them.

Selectman Douglass said that it sounds unreasonable that it takes 3 seasons to train the Aides to be fully independent. He recommends that this area be looked at because something is wrong with program if it takes three years. This is not cost effective and you run the risk that they will leave because they are part time. DMR needs a program to get them independent for the second season.

Terry Watson stated that in the past Don Card was the area biologist and then DMR forced everyone into jobs that have nothing to do with being a biologist – they end up working on ordinances and other stuff. They could be used more efficiently. Through Don Card's efforts a lot of the shellfish areas were opened.

Dave Etnier went over the history of this event. Hal Winters, who supervised the biologists, retired and DMR used that retirement to increase to four area biologists (they split up the Downeast region into two regions). He then discussed the realignment of biologists and stated that they are being restructured to assist with water testing.

Representative Percy asked if the Conservation Aides are out training now. Dave Etnier replied that they were, but he did not know how they are organized. Dick Lemont stated that he has not met them and wanted to know if samples can be taken from a boat because he got word that that was not allowed anymore.

Selectman Douglass read a letter from Brunswick that expressed their concerns with DMR testing. The group then discussed sampling by boat vs. land. Dick Lemont stated that if DMR is going to require him to test by land they will have to find someone else because it takes too long. He also has issues with DMR discontinuing testing stations that are sampled by boat and adding stations in Atkins Bay and Wymans Bay. They are discontinuing stations that were testing well by water and adding other stations - which also adds to the cost.

Bob Cummings mentioned that he had a conversation with a biologist who said that the most accurate testing method is by boat. Mike Young, Town Administrator, added that he had also researched this issue with one of the area biologists and was told that the best testing method is by boat and not at dead low tide – the testing should be done when there is 12 to 18 inches of water over the flats. This was also reinforced by Dick Lemont who added that clams are not siphoning at low tide and water shouldn't be sampled then. He further stated that DMR wants stations shore oriented.

Selectman Perkins stated that a 3 to 5 year time frame for conducting testing and surveys is disturbing and that DMR has some in-house problems, including testing procedures. He requested that Mr. Etnier review the testing procedures.

Dave Etnier replied that the testing by boat or shore issue was news to him so he will check it out. Dick Lemont will provide him with specifics on testing sites so that he can see why some stations were closed and others were opened. He explained that the issues in Brunswick were spikes in some areas and dog feces along the shoreline. This was the same issue in Harpswell.

Selectman Douglass recapped the discussion: (1) There is a concern whether the testing is accurate and there is a problem with the methods used (testing by land vs. boat and tide height); (2) DMR will complete the procedures for opening Brightwater immediately; (3) There is a concern about taking 3 seasons to get the Conservation Aides certified for testing; (4) There are internal personnel issues that DMR has to resolve; (5) Brunswick alludes to a lack of communications with DMR. Selectman Pye added that DMR is also going to try and get a commitment from DEP to assist with shoreline surveys.

Dave Etnier offered to meet with Dick Lemont, Amy Fitzpatrick, and others to go through these issues.

Selectman Douglass asked that DMR consider having a third party review of the department and their procedures. He felt it might take pressure off those trying to work within the system and help morale. Dave Etnier replied that a third party review of shellfish water quality program was discussed this spring but had not been followed up.

Bob Cummings stated that operating a shellfish program involves a lot of money. He had been told in the past that the Kennebec River would never reopen and Phippsburg pushed and pushed and got the areas reopened and the Town will continue to do the same with other areas that DMR tries to keep closed. Mr. Etnier disputed the claim that DMR tries to keep areas closed.

Terry Watson stated that there are a lot of different things going wrong not just one specific item. We are heading back to where we were in the 70's. FDA rules were meant to be the same across the states but Maine looks at a specific issue instead of the overall condition of an area like other states. Other states do not look as hard to find little blocks of pollution but look at the whole picture. When Paul Anderson was working for DMR he would look at other states and see what could be done to help out the Maine program. Maine is not using the same program as other states – how can Boston Harbor be open to harvesting and Maquoit Bay closed?

Selectman Douglass said that at some point the Towns had a good relationship with DMR. We need to see results and reestablish a good relationship based on a cooperative footing.

2. Meet with Jack Barnicle, Town Attorney, concerning North Creeks Farm Case (executive session).

At 7:08 p.m. the Selectmen voted (3-0) to go into executive session pursuant to 1 M.R.S.A. 405(6)(E) for a consultation with the Town's Attorney concerning pending litigation against North Creek Farms. Town Administrator Mike Young, Planning Board Chair Marie Varian and Code Enforcement Officer Lee Rainey were also in attendance during the session.

At 7:45 p.m. the Selectmen voted (3-0) to come out of executive session.  
No further action taken.

### III. Unfinished Business

1. Discuss letter from MCBDP on participation in the Midcoast Military Redevelopment Zone Program.

**Discussed. No one has contacted Town Office requesting to have their property enrolled in this program. No further action taken.**

2. Review and sign letter of support for the "Transportation Enhancement Proposal" funding grant for Fort Popham.

**Letter reviewed and signed.**

3. Other unfinished business

A. Performance of Lynn Totman as Board Secretary

**Selectman Douglass asked if Lynn Totman was working out**

satisfactorily as a Board Secretary. Administrator Young replied that she was doing fine.

- B. E-mail from DOT concerning the paving of shoulders on Route 209

**Selectman Douglass read an e-mail from DOT stating that they would be repaving the shoulders of Route 209 during their scheduled overlay which will be done after September 15<sup>th</sup>. He further stated that this was good news.**

#### **IV. New Business**

1. Chamber of Commerce informational meeting

**Selectman Douglass stated that he may attend.**

2. Re-establishment of the Sagadahoc County Communications Center Board of Directors and Advisory Committee.

**Based on recommendations from the Fire Chief, Rescue Chief and Police Chief the Selectmen will recommend that the County reestablish the Board of Directors but not the Advisory Committee. Selectman Douglass stated that he would fill a board position if no one else volunteered.**

#### **V. Public Forum**

1. Board of Appeals complaint

**Steve Norris stated that he had issues with some comments that the Board of Appeals made concerning past cases and wanted to know who he could complain to. The Selectmen advised him to discuss his issues directly with the Board of Appeals.**

#### **VI. Adjournment – Selectmen voted (3-0) to adjourn at 8:07.**