

**Agenda**  
**Warrant Committee Meeting**  
**Thursday, March 31, 2022**

**I. Call to Order/Roll Call:** 6:00pm by Chair Libby; 9 voting members present at roll call

**Present:** J. Berberian, C. Chappell, C. Cough, K. DesVeaux, S. Libby, E. Sassaman, C. Smith, K. St. Germain, J. Young; **Present but not at roll call:** B. Chaplin, M. Kelly, C. Ryan; **Absent excused:** L. Lopez, B. Reece, A. Sasner

**II. Opening remarks**

Chair Libby stated that historically the General Government subcommittee would first review and make recommendations for warrant articles such as those involving land use ordinance changes. This meeting is an opportunity for all Warrant Committee members to have an overview of the warrants before the General Government subcommittee makes their recommendation. He noted that there are 2 municipal bond issues, which will be presented by Town Manager Sutherland. There are additionally 3 citizen's petitions concerning land use ordinance changes, and the Warrant Committee will hear from the proponents of each petition. If requested, the Warrant Committee will also hear from town staff about these items. Chair Libby reminded Warrant Committee members that this would not be a meeting of deliberations or voting, but rather a tutorial. Each proponent would have six minutes for their presentation and 14 minutes for questions.

**III. Presentations of non-budget warrant articles**

**A. Article Q – Bond Article - Priority Infrastructure Improvements Bond**

Mr. Sutherland noted that this is an almost \$44 million bond that includes many program needs. It will address CSO (combined sewer overflow) requirements, additional sewer system needs, and will synergize with other projects. His presentation highlighted the trunk line, as projects that address that relate to that core infrastructure will cost approximately \$23 million. Some of that cost is identifying the location of cracks. Some pipes must have their diameter increased, and there will also be planned stormwater work with the DEP. Not all projects are tied to the CSO, but make it makes sense to address other projects while the groundwork is underway. Mr. Sutherland is working to have portions of these improvements financed with grants and low interest loans. Securing those resources would ultimately bring down amount of the bond.

**B. Article R – Bond Article - Engineering, Design, Procurement, Construction, and Interconnection of a Free-Standing Solar Array located on Town-owned Property**

Mr. Sutherland made this presentation on behalf of the town. He outlined the habitat at the site, which may include vernal pools. Overall, projects like this are the goal of the Climate Emergency Task Force. Ms. Chappell asked for clarification of the term “energy rec.” Mr. Sutherland responded that it refers to electricity credits (renewable energy credits), which help make a product financially viable and demonstrate that a project is net neutral. The town could hold the RECs and not make money or sell those to a third party looking to have that distinction. Borrowing funds is the current issue, as the Town Council can decide at a later date about selling the RECs. This array would power roughly 60% of municipal facilities, including the school and wastewater treatment plant. The site is a brownfield and there is potential for it to be remediated for housing. Chair Libby noted that the price tag was significant and mentioned that the town had considered this in the past. Mr. Sutherland noted that as the town owns the land in this case, there is money to be saved. The focus is really on the RECs, which is where a business would make money. Otherwise, if the town retains the RECs, it will break even further down the road. The DEP also requires funds to be set aside to decommission the array, which increases the overall project cost. Ms. Ryan asked how soon the work could begin. Mr. Sutherland stated that the work was already underway, as some CIP funds were being used to get material needed. Then the town could reimburse itself for the initial outlay with bond money. Mr. Chaplin asked if there was money for this in the current administrative infrastructure Mr. Sutherland responded that the old model of funding has changed and that the priorities focus on equity. He is interested in speaking to year-round residents and seeing how much they pay for water and sewer. That data will support grant applications. Mr. Cough asked if there was an estimate of the increase that water and sewer users would see. Mr. Sutherland responded that he hadn’t had a chance to do that analysis yet. He added that he would propose that people who use more should pay more and aims to have some external funding to pay costs. Ms. Reece noted that our water and sewer rates are low compared with other communities. It was noted that “affordable” rates could be up to 2% of a median household income, and our rates are approximately 1.2% by that measure. This could hinder some grants, as there is still room in the rate structure to pay for some of these projects. Ms. Ryan asked how that works with respect to hotels. Mr. Sutherland said that they are not part of that calculation as they are not year-round residents. There may be steps depending on usage, and he intends to do additional analysis on this. Ms. Chappell asked whether the low interest loans were loans to the town or loans to rate payers. Mr. Sutherland replied that the loans would be for the town. The full project cost does not include possible interest rate fees tied to loans. Mr. Chaplin asked about the timing of the grants. Mr. Sutherland said that some proposals were due as early as April 8.

**C. Article 2 – Australian Ballot - LAND USE ORDINANCE AMENDMENT -- Rezoning of the Oceanarium and Education Center land from Shoreland Limited Residential District to Marine Research District**

This presentation was given by Jeff Cumming, the petitioner and Executive Director of the Oceanarium, and Sam Copeland. Jeff stated that the property was purchased last year and a 5013C nonprofit organization was created to restore and revitalize it. In that process, it was

determined that the zoning was not appropriate for that property, and they seek to align the zoning with the intended use of the property. Mr. Copeland added that the zoning was not so much inconvenient as inappropriate. The property's establishment preceded zoning changes, which made it non-conforming. Planned expansion of the education activities will only increase the nonconformance. He added that MDIBL was similarly nonconforming, and so the Marine Research District was created to acknowledge its particular use and related activities. That change was overwhelmingly approved at the time, and this proposal is very similar. Vice Chair Berberian noted the proposal indicated that facility improvements at the site would allow for the expansion of opportunities including a possible site for selling fish products and asked for more information. Mr. Cumming noted that there was nothing definite in that list, and they are considering what might be feasible and align with their evolving strategic plan. He added that there could be small-scale experiments, like a fish farmer's market, that would be in line with the marine research part of the zoning. They would proceed through proper channels if they were to pursue a fish farmer's market on site. Ms. Chappell asked if the owner currently pays tax on the property, and how an application for non-profit status might relate to this and the zoning change. Mr. Copeland replied that the tax status is based on the property's use and status of the owner, and that many local non-profits do PILOT payments to the town in lieu of property tax payments. Mr. Cumming added that the focus was not on personal gain but providing a service to the area and being an asset for the town. Vice Chair Berberian asked about the zoning as it relates to aquafarming, specifically what implications there may be if the current owner sells the property in 5 years. Would there be an opening for aquafarming? Mr. Cumming replied that he hadn't considered that question because aquafarming is not on his radar. The property is fully paid for and owned outright, and there is no return expected for its purchase or motivations to sell it. The long-term vision aligns with work being done by conservation organizations. Mr. Copeland added that the Marine Research District does not allow for that kind of commercial activity. They cannot base a commercial aquaculture farm on this property. Vice Chair Berberian noted that she was not opposed to more tools they could use but didn't want the balance to be inadvertently shifted down the road. Mr. Copeland reiterated that this was very similar to the earlier MDIBL situation. Mr. Cumming added that they could have an educational exhibit related to aquaculture. Ms. Gagnon noted that the proposal is not deficient and does not conflict with current land use language. Ms. Chappell noted that the General Government subcommittee would be meeting April 7 at 6pm, and it would be helpful for the petitioner to attend.

**D. Article 3 – Australian Ballot - LAND USE ORDINANCE  
AMENDMENT — Expansion of the Scientific Research for Eleemosynary  
Purposes District**

This presentation was given by Jackson Laboratory representatives John Fitzpatrick, Senior Director of Facilities, and Mike McKernan, Director of Government and Community Affairs. As stated, the goal of this proposal is to unify the properties owned by the Jackson Laboratory into a single contiguous zoning district. Currently, some parcels are zoned as Village Residential. This would enable the laboratory to expand more in the core part of its campus, rather than at the periphery. There would also be added flexibility for housing, as currently the housing cannot be

used for short term use. Short term residents would include students, workforce housing, and visiting scientists. The change would cover seven purchases that the Jackson Laboratory has made over the last decade, as well as a single residential parcel. The representatives stated that they feel that this change aligns with the town's current 2007 Comprehensive Plan. Ms. Ryan stated that the plan sounded logical and asked what the plan was for the small parcels. Mr. McKernan replied that the long-term plan is to not develop those areas and allow them to be restored to their natural state. The residence in question would be razed at the end of its usable lifetime. Mr. Fitzpatrick added that this would be similar to how the Ocean Drive Dairy Bar was razed, and the triangle in that area would be reverted to a campus gateway. Mr. Chaplin asked whether this plan would result in any land being removed from the tax rolls. Mr. Fitzpatrick responded that the Jackson Laboratory owns this property already, and that the laboratory intends to pay taxes on residential improvements to buildings such as the old bookstore and the new apartment building, but they will retain the nonprofit status for the land.

#### **E. Article 4 - Australian Ballot - Citizen's Petition for Adult Use Marijuana Store Licensing Ordinance**

Chair Libby first referenced an email the Warrant Committee received from petitioner attorney Hannah King, stating that the Warrant Committee does not offer legal opinions. It does, however, review warrants including proposed changes to the land use ordinance. Derrick Sekulich, the petitioner for this warrant article, was joined by his lawyer, Hannah King. Ms. King opened their presentation by stating that she has represented approximately 450 cannabis businesses, and some of this effort has included working on marijuana sale licenses. She stated that in 2016, Bar Harbor residents voted in favor of a state referendum to allow retail marijuana sales in town, and that this current petition had been drafted by a committee led by Mr. Sekulich. As written, it is narrowly tailored and quite restrictive, and would allow only 2 retail marijuana stores in Bar Harbor, not any related manufacturing or processing activities. Ms. King stated her view that there was no need to amend the town's land use ordinance, as what is proposed fits within the retail designation. The ordinance includes restrictions on the proposed retail stores' hours of operations (from 10am -8pm), enhanced security requirements, and the holder of the town license would also need a Maine state retail license. Ms. Sheryl Dewalt, owner of the Tree of Life Day Spa, spoke in support of the project as well. Mr. Sassaman asked about the age requirements for retail sales. Ms. King responded that people would need to be 21 years or older to enter the store. She also mentioned a variety of restrictions on the location of the retail stores, including a minimal distance from schools. Vice Chair Berberian asked for more information about the land use ordinance in question. Ms. King responded that this ordinance was drafted in a way so that it would fit within the existing land use ordinances. She added that the petitioners were open to amending the land use ordinance. Mr. Chaplin asked how the distancing requirements would work. Ms. King responded that potential license holders would need to submit proof that their proposed retail location met all requirements, which might call for a survey. Ms. Dewalt added that she believed there are properties on Cottage and Main Streets that would comply. Chair Libby asked if safe spaces, such as at the police and fire stations, are included in the distancing requirements. Ms. King responded that

the town has areas under that statute. Ms. St. Germain asked how this proposed ordinance compares to the ordinance in place in Southwest Harbor. Ms. King replied that the two ordinances are quite similar. Ms. Dewalt added that the proposed licenses would be distributed on a first come, first served basis, which is not the case in Southwest Harbor. Chair Libby asked Mr. Sutherland to speak on behalf of the town. Mr. Sutherland responded that the licensing ordinance is similar to that of Southwest Harbor, but a difference is that two towns have different sets of land use ordinances. He noted that the issue is not a matter to do with merits so much as settling the license ordinance with respect to the land use ordinance. Mr. Cough asked what would happen if a daycare facility moved in next to an existing marijuana retail store. Ms. Gagnon responded that the distance requirements are for existing uses. Mr. Sutherland added that the retail store would be nonconforming but would still be able to operate, as the daycare facility would have known in advance. Ms. Gagnon added that Mr. Sekulich and Ms. Dewalt did a great job and that the land use ordinance in Bar Harbor is complex. She described how Bar Harbor's land use ordinance operates as an affirmative ordinance, meaning that a use needs to be specifically stated for it to be allowable. Unless something is expressly allowed, it is not allowed. Ms. Gagnon also outlined the number of districts in Bar Harbor that allow retail sales. She added there was not a value judgement, but it was how the proposed ordinance worked with the language of the town's land use ordinance. Ms. King added that as only 2 stores could operate, the question of the number of districts was moot.

#### **IV. Closing Remarks**

Chair Libby reminded Warrant Committee members that nomination papers are due by April 15. The General Government subcommittee will meet on April 7, and the full Warrant Committee vote on this meeting's presentations will be on April 11.

#### **V. Adjournment**

There being no further business, Chair Libby moved to adjourn the meeting. The meeting adjourned at 7:53pm.

Respectfully submitted,

Christine Smith  
Secretary, Warrant Committee