



HAMPDEN TOWN COUNCIL  
HAMPDEN MUNICIPAL BUILDING  
MINUTES

MONDAY

MARCH 21, 2016

7:00 P.M.

*Attending:*

*Mayor David Ryder*

*Councilor Greg Sirois*

*Councilor Ivan McPike*

*Councilor Stephen Wilde*

*Councilor Dennis Marble*

*Councilor Mark Cormier*

*Councilor Terry McAvoy*

*Town Manager Angus Jennings*

*Town Clerk Paula Scott*

*Town Attorney Edmond Bearor*

*Code Officer Myles Block*

*Building Inspector Jason Lundstrom*

*Jared LeBarnes*

*Rec Director Shelley Abbot*

*James Butler*

*Mayor Ryder called the meeting to order at 7:00 p.m.*

- A. **PLEDGE OF ALLEGIANCE** – *Mayor Ryder led the Pledge of Allegiance*
- B. **CONSENT AGENDA** – *Motion by Councilor McAvoy, seconded by Councilor McPike to accept the Consent Agenda. Unanimous vote in favor.*

**1. SIGNATURES**

**2. SECRETARY'S REPORTS**

- a. March 7, 2016 Meeting Minutes

**3. COMMUNICATIONS**

- a. **MDOT/Town – Installation of rumble strips**
- b. **Armstrong Tennis Center – Victualer's License Renewal**
- c. **Dysarts – Victualer's License Renewal**
- d. **Pizza Gourmet – Victualer's License Renewal**
- e. **R & K Variety – Victualer's License Renewal**
- f. **Maine PowerOptions informational meeting**

**4. REPORTS**

- a. **Planning & Development Committee Minutes – 3/2/2016**
- b. **Services Committee Minutes- 2/8/2016**
- c. **Infrastructure Committee Minutes-1/13/2016**

**NOTE: The Council will take a 5-minute recess at 8:00 pm.**

**C. PUBLIC COMMENTS - None****D. POLICY AGENDA****1. NEWS, PRESENTATIONS & AWARDS - None****2. PUBLIC HEARINGS**

**a. Dangerous Building – James Butler – Map 21 Lot 8 - At 7:01 p.m.,** Mayor Ryder officially opened the Public Hearing. As the first order of business of the Public Hearing, Mayor Ryder informed those present that Mr. Butler had requested a continuance of this proceeding. He then turned the floor to the Town's legal counsel, Edmond Bearor to present information regarding this request. Mr. Bearor addressed the council directly and stated that the request for a continuance is a threshold matter whereby the council should hear Mr. Butler's rationale for wanting the continuance. In reference to court proceedings in which there have been examples of dangerous buildings court cases, the statutes state that for good cause shown, the court "may" grant a continuance. Mr. Bearor stated that in this situation, while not a court proceeding, the council could find it in their power to either grant or not grant a continuance but the standard that should be used is whether or not there is good cause. He further stated that while there may be differences of opinion as to what good cause means, he advised that as best as can to listen to the explanations that Mr. Butler gives and then determine whether or not to continue this hearing to the first meeting in April, which is on the 4<sup>th</sup>. If the decision is to go forward and not grant the continuance, we would start with the Town's Code Officer presenting his case. There would be opportunities for both sides to ask questions of the Code Officer. Mr. Bearor said then, at Mr. Butler's further request, you might want to continue the balance of the hearing. Or, alternatively, you could wait until April 4<sup>th</sup> to have the hearing. At any case, the first order of business would be to hear the reasons why Mr. Butler is requesting the continuance. At this, Mayor Ryder invited Mr. Butler to the podium to explain his reasoning. Mr. Butler began by thanking the council for the opportunity to address them, and stated that he had had the privilege of speaking with Manager Jennings earlier in the day. Mr. Butler stated that Manager Jennings enlightened him on the process. He stated that he also took the opportunity to reach out to council members and reached all but two. He understands that the situation he finds himself in is not a favorable one as the property owner but he feels he is involved in something in which he needs legal representation. He referred to the presence of the Town's attorney and used the example that Mr. Bearor gave, citing how a court of law might handle the continuance. Mr. Butler said he knows this isn't a court of law, but it is a situation that could greatly affect him and before he can try to defend himself, he needs some assistance. He acknowledged receiving notification but stated that the process is not something he brought forward, it came to him, and he was not aware of this meeting here tonight until he was served paperwork by a sheriff about a week and a half ago. He requested a continuance without testimony for practicality reasons. He is not prepared to give testimony tonight, and if someone else gives testimony, he would like to have the opportunity to cross examine or ask questions of that person. He stated that

he has been behind the eight-ball and didn't realize the severity of the situation until he called Manager Jennings today to ask if the meeting was going to be canceled because of the snowstorm. He summed up his statement by once again asking that the continuance be granted. He then thanked the council and returned to his seat. At this point Mayor Ryder asked fellow council members what they favored; whether they wanted to grant the continuance or whether they wanted to continue on with the hearing. Councilor McAvoy stated he is not opposed to a continuance, however, if it is continued until the April 4<sup>th</sup> meeting, he questioned if it would still be a public hearing, an exact replica of what was supposed to take place tonight. He also questioned whether or not the Town would have to re-advertise for the new public hearing. Manager Jennings stated that we would not have to re-advertise because the public hearing was opened, but continued without testimony and there is no evidentiary content from tonight. Mr. Bearor further stated that as long as it is continued to a date certain, there is no need to re-advertise under that circumstance. Councilor McAvoy asked if the continuance was granted until April 4<sup>th</sup>, was there anything that Mr. Butler could do in the interim to fore stall the next hearing, as far as trying to meet some of the goals in trying to secure this unsafe building. Mr. Bearor stated that the statutes that guide municipalities in these hearings for unsafe buildings are silent on what is adequate notice, they just state that you have to "give notice". Mr. Bearor stated that anywhere from 7 days to 21 days might be considered reasonable, and in this case, notice was 11 days. The service by the sheriff's office was attempted on more than one occasion until service was finally made, and we have been trying since February. Mr. Bearor stated that he believes that if we wait until April 4<sup>th</sup> to hold the hearing, there would be no grounds that would warrant further continuation or frustration of the process. Councilor McAvoy asked if Mr. Butler did happen to do any repairs that might mitigate some of the issues, if that could be presented on his behalf at the later hearing. Mr. Bearor stated that it could, but that the Code Officer should do an inspection prior to the meeting so that his testimony is fresh and so that he can compare the state of the building to prior photographs and inspections. Mr. Bearor further stated that if Mr. Butler were to do repairs it would most likely be welcomed, but the hearing would go forward to determine whether or not it was still a dangerous building. Mayor Ryder then recognized Councilor Marble who stated that as far as the continuance goes, he assumes it will go to a vote and he has never been on that side of the table in a hearing but he wanted to say a few things specifically to Mr. Butler. He had two different citizens approach him this past weekend questioning the safety of that building. Councilor Marble stated that he is frustrated at the fact that Mr. Butler has come very level headed to tonight's meeting and requested a continuance by stating that he did not have enough notice and not enough time to prepare. Councilor Marble stated that from what he has gathered in following this since early last fall, with nothing material having been done since August or September, it appears that there is a consistent pattern of non-response. Councilor Marble said that this is the latest example of how this process has been delayed. Councilor Marble said that he was going to vote for a continuation, but he wanted Mr. Butler to know that it was because he owes the people and taxpayers of this town every assurance that the council offered Mr. Butler every consideration so as to not in any way risk any further consequences legally or otherwise to the members of the town. He stated he would not be voting to grant a continuation because of anything Mr. Butler had done, but for the members of the town.

*At this time Mayor Ryder recognized Councilor McPike who addressed Mr. Butler by saying that he was one of the two council members who had not been contacted by Mr. Butler. He asked Mr. Butler to explain why he hadn't emailed him along with the others, and why he requested a continuance as there had been no changes since last August. Mr. Butler, speaking from the audience and not the podium, stated that he did not email the other members, he had called them and that he simply ran out of time as it was close to meeting time. Councilor McPike stopped him from responding further and asked that he approach the podium and the microphone before continuing, to which Mr. Butler complied. Mr. Butler apologized for not making contact earlier and stated that he appreciated what Councilor Marble said and told the council that he would be prepared to address that, just not tonight. He stated that he does not know the mechanics of how this process works, that it is not something he knew anything about. He stated that he was concerned that if the continuance wasn't granted it would be a situation where the council would have legal representation present, but that he would not. He stated that in talking with the councilors, he understood that there were committee meetings and processes that discussed this situation that he had not been a part of other than tonight. He stated that he was not invited until he received a notice from an attorney that had been served by the sheriff and he wished he had been involved before tonight. He said as part of his testimony that he is not prepared to give tonight, he would be more than happy to explain the reasons why agreements he had made with code enforcement had fallen short on his part. Mr. Butler said, in returning to Councilor McPike's question, that he did not realize until today in talking with the Town Manager, the mechanics of and the severity of the situation that he found himself in. He stated he didn't realize that it had gotten to this point and since his forte is not where he is at, or in making sure that his side is fairly represented without counsel; he stated that he would like the opportunity to present his side and discuss how he got to this point after talking to Code enforcement last fall. He said how the severity of the weather played a part, that there were all kinds of complications. He stated that a continuance was not a stall tactic and that he too is a tax payer and he appreciated what Councilor Marble said. He stated that he is just simply not prepared and that for the town to say they are possibly going to take action by tearing down someone's building that he takes that as being pretty serious. He asked Councilor McPike if that answered his question. Councilor McPike said it did answer the question but he didn't know if it satisfied the question because he was reading all of the contact made by Code enforcement, all of the time they have spent on this and how Mr. Butler had received a notice saying that tonight's meeting was going to be a public hearing, but that he still wasn't prepared and wasn't in there ready to fight rather than put it off for another two weeks. Mr. Butler responded by saying he did intend to fight on his own behalf, but he had never realized that the town was going to have an attorney here and he would be at a disadvantage. He again reiterated that he does not understand the mechanics of these types of proceedings, he did not understand that it would be "won and done" tonight. He also again stated that he was not a part of the process at committee level, was not asked to be on the committee, if that was possible, was not a part of the discussions leading up to tonight's meeting. He said he felt he did not get notice until the last hour and was at a disadvantage. Councilor McPike asked him what he thought when those gentlemen (pointing to the Code Officer and Building Inspector) kept coming to him about his building, was it not taken seriously? Mr. Butler stated that he appreciated Councilor*

McPike's frustration and that although his next statement was part of testimony, he will share just a little bit. He said that when they approached him, they were very nice and sincere, and asked him what his intentions were. He said he told them he didn't have the finances to address it at this time. He said they gave one option which was to put up a fence. He said he had wanted to comply, but it was late in the season, the severity of the weather played a part, he did not have the finances, and that time of year his job is busier. He said he had other complications, single dad, loss of his mom and he just couldn't make that commitment. Mr. Butler stated that after 30 days, like a gentleman, the Code Officer told him it was out of his hands and he was going to have to turn it over to the Town Manager who would make a decision to bring it to the council and that he would be hearing from the town. Mr. Butler said he could sense that the council was frustrated and wanted to assure them that he would be here in two weeks prepared to give complete testimony and to let them know his intentions. He stated that he had no intentions of letting the town come on to his property and taking a building down. He said that was not going to happen as long as he is alive. He said he will do everything in his power to prevent that. Mr. Butler apologized for letting it get to this point and acknowledged the position the council is in but again asked for continuance without testimony. Mayor Ryder asked if there were any more councilor comments or questions. Councilor Sirois addressed Mr. Butler by reminding him that he indicated he works in the industry; the building is falling into itself, the foundation is gone, the chimney is gone, and wanted to know the plan for shoring it up. He stated that he believes it to be beyond repair. At this point Mr. Bearor interjected and said he felt like it was getting too much into the substance of the matter rather than just the request for the continuance. At that, Mayor Ryder asked for any more comments on the continuance. Councilor Wilde stated that he represents District 1 and felt that the council should move toward the continuance to make sure that they are affording Mr. Butler every opportunity to rectify the situation. He stated that he does have a lot of concerns based upon the number of back and forth visits, and paperwork and pictures and that this was a serious matter, not just the building but the safety aspect. He stated that the portion of the foundation that he could see is collapsing and that is why they are so concerned about it because they do not want to see this building collapsing into the road and ultimately end up killing somebody. He said in an effort to work with Mr. Butler he wanted to afford him every opportunity to rectify the situation and that he should be prepared to come back in two weeks with representation and a plan. He stated that he agrees with other council members in that this has been too long, but wants to give him the opportunity to be heard. At this point, discussion ceased.

Motion made by Councilor Wilde, seconded by Councilor McAvoy to grant a continuance on this matter until April 4<sup>th</sup>.

Mayor Ryder, Councilor Wilde, Councilor Cormier and Councilor McAvoy voted in favor of granting the continuance.

Councilor Marble, Councilor McPike and Councilor Sirois voted in opposition to granting the continuance. Motion passes, 4-3. This vote concluded the Public Hearing at 7:25 p.m.

Mr. Bearor then addressed Mr. Butler and the Council both and stated that although he always feels it is a good thing when a citizen reaches out to councilors with concerns,

*and while that was ok for this continuance discussion, he reminded all parties that at the hearing on April 4<sup>th</sup>, the Council is tasked with making a decision based upon the information presented at that hearing. He reminded Mr. Butler that the council are to act as judges during the hearing and anything they take in for information is supposed to be heard in the council chamber, with everyone getting the same information at the same time and to please refrain from approaching the Council in advance of the hearing.*

### **3. NOMINATIONS – APPOINTMENTS – ELECTIONS**

- a. **Appointment of Lowell T. Sherwood to Library Board of Trustees - Services Committee recommendation.** – *Motion made by Councilor McAvoy, seconded by Councilor Marble, to appoint Lowell T. Sherwood Jr. to the Dyer Library Board of Trustees. Unanimous vote in favor.*
- b. **Appointment of Betty Magaw to Personnel Appeals Board - Finance Committee recommendation.** – *Motion made by Councilor McAvoy, seconded by Councilor Marble, to appoint Betty Magaw to the Personnel Appeals Board. Unanimous vote in favor.*

### **4. UNFINISHED BUSINESS**

- a. **FY16 Proposed Budget Adjustment-TIF Revenues**

*Manager Jennings reminded Councilors that when FY 16 Budget was approved it allocated \$20,000.00 as TIF expense, the same amount budgeted for a number of years. Due to the Emera TIF which included significant financial obligations under the Credit Enhancement Agreement, two weeks ago at the council meeting, a budget adjustment was approved to shift funds from unassigned funds. He assured councilors that the TIF was reported correctly to the state and the Department of Revenue. Because it was reported correctly to the state, the entire amount of TIF Revenue is subject to capture, provided it is done within the current fiscal year. Councilor Marble spoke regarding the learning curve in understanding TIF sheltered funds and believes that these sheltered funds are serving the taxpayers greater. Motion made by Councilor Marble to shelter \$88,871.51, seconded by Councilor Sirois. Councilors Wilde, Marble, Ryder, Cormier and McPike voted in favor. Councilor McAvoy voted in opposition. Motion carries.*

### **5. NEW BUSINESS**

- a. **Order establishing rules for Conservation/Recreation funds-referral from Services committee** – *Motion made by Councilor McAvoy, seconded by Councilor Marble to adopt the Order as proposed. Unanimous vote in favor.*

- b. Funding proposals from Conservation/Recreation account**
  - 1. VFW Tennis court resurfacing**
  - 2. VFW Basketball and Tennis court repairs**
  - 3. Dorothea Dix Park Signage**
  - 4. Marina ramp paving**
  - 5. Port-a-Potty enclosures for various locations**
  - 6. Picnic tables for various park locations**
  - 7. Community Center Plan revisions**
  - 8. VFW Road parking area**

*Mayor Ryder recapped the spending request as presented for repairs and upgrades to recreational areas within Hampden. Motion made by Councilor McAvoy to authorize the Town Manager to spend up to \$69,364.00 from the Conservation/Recreation reserve account for the purpose of repairs or upgrades to current facilities, seconded by Councilor Wilde. Discussion followed. Councilor Cormier stated that he would like to go on record in disagreement over spending any of these funds on item #7. Councilor Wilde spoke indicating that use of these funds will keep these items from ending up in the Town's long term planning that would ultimately cost the tax payers more. After discussion ceased the motion was brought to vote. Councilors McAvoy, Wilde, Marble, McPike, Sirois, and Mayor Ryder voted in favor. Councilor Cormier voted in opposition. Motion carries.*

- c. Proposed ordinance amendments**
  - 1. Fees Ordinance – referral from Infrastructure committee and from Services committee**
  - 2. Zoning Ordinance – referral from Planning & Development committee**
  - 3. Subdivision Ordinance – referral from Planning Board**
  - 4. Shoreland Zoning Ordinance - referral from Planning Board**
  - 5. Sewer Ordinance – referral from Infrastructure committee**

*Mayor Ryder opened this portion of the agenda by stating that he would like to propose some changes. He stated that he would like to postpone items 1, 4 and 5 as there is not enough information at this time to put these items to public hearing. Mayor Ryder stated that these items would go back to each appropriate committee. Councilor Wilde made the recommendation to refer the Fees Ordinance, Shoreland Zoning Ordinance and Sewer Ordinance back to the appropriate committees. Unanimous recommendation to refer back to committee level.*

*Mayor Ryder then stated that he would entertain a motion to send item 2- Zoning Ordinance, referral from Planning and Development committee and item 3- Subdivision Ordinance, referral from the Planning Board to Public Hearing on April 4<sup>th</sup>. Councilor*

*Marble made a motion to send the Zoning Ordinance and Subdivision Ordinance to Public Hearing, seconded by Councilor McPike. Unanimous vote in favor.*

- d. Request to use IT computer reserve funds to purchase first year of service of MyRec.com - Request # 1: \$3,695.00 or Request #2: \$4,495.00 - recommendation of the Finance committee**

*Mayor Ryder stated that the recommendation of the Finance committee earlier tonight was to go with request #2 in the amount of \$4,495.00 to come out of the IT Reserve account which has a balance of \$72,000.00. What this is intended to do is to allow townspeople to sign up for programs and activities on-line.*

*Councilor Wilde made a motion to approve the use of IT Computer reserve funds in the amount of \$4,495.00 to purchase the first year of MyRec.com, seconded by Councilor Marble. During discussion, Councilor McPike asked if we knew yet what the price will be for the second year. Manager Jennings clarified that the first year price is \$3,695.00, but with the addition of the two kiosks, the price is \$4,495.00. He then stated that the first year proposal is based on a revenue estimate. We had provided to MyRec what the total revenues were for recreation and pool last year. They had to make a determination as to how much of that will now go through the on line system. Their estimate was revenues between one and two hundred thousand a year will go through their system and that is what they based their estimate on. The second year pricing will be based on actual usage information. Councilor Marble spoke to the amount of work that Recreation, Pool and Administrative staff did on putting together this proposal and the thought that went in to providing and upgrading services to the town and thanked the staff for that work. Discussion ceased and the motion was brought to vote. Unanimous vote in favor.*

## **E. COMMITTEE REPORTS**

**Services Committee:** *Councilor McAvoy reported that at the last committee meeting, they discussed, at length the Conservation/Recreation funds and also to a lesser degree, the proposed Community Center Plan, all of which were covered tonight.*

**Infrastructure Committee:** *Councilor Marble reported that this committee has not met since the last council meeting.*

**Finance & Administration:** *Councilor Sirois reported that this committee meeting has involved discussing the TIF and moving sheltered funds, the MyRec proposal, as well as the funding out of the C/R account the repair of items listed on the agenda, all covered at this council meeting.*

**Planning & Development Committee:** *Mayor Ryder reported that he filled in for Councilor McPike at the last P & D meeting. At the meeting, they discussed the open space portion of the Subdivision and Zoning Ordinances as discussed tonight and set for public hearing on April 4<sup>th</sup>. The committee discussed the codification process which is still in the works. Discussed the topic of private ways within the subdivision ordinance and hope to have a recommendation by March 30<sup>th</sup>. There were discussion*

s on the draft mineral ordinance repeal which is in the attorney's hands at this point. Other areas covered were flag lots, the sewer line issue at Ammo Park as well as home occupations.

- F. MANAGER'S REPORT** – *Manager Jennings reported on his attendance at the Planning Conference on Saturday. He reported on the annual Stream Clean Up which is slated for Saturday May 7<sup>th</sup>, and the MRC/Fiberight Public Hearing that is scheduled for April 13<sup>th</sup>. Manager Jennings reported that the Recreation Department's Spring Program has been released with a good presence on the website and social media. He also informed councilors that the RSU 22 Building committee meeting is scheduled for March 22<sup>nd</sup> at 6:30, and the Budget Hearing is scheduled for March 29<sup>th</sup> at 6:30 p.m. Manager Jennings also reported on the fact that he and his family finally had the opportunity to take advantage of the expanded Dorothea Dix Park Trails. He spoke to what a great resource this is for the residents and encourages everyone to visit them.*
- G. COUNCILORS' COMMENTS**  
*Councilor Sirois – None*  
*Councilor McPike – None*  
*Councilor Wilde – None*  
*Councilor Marble – None*  
*Councilor Cormier – Would like to encourage members of the public to attend council meetings.*  
*Councilor McAvoy – Invited everyone to join him this Saturday at Anglers from 11:00 – 12:00. The primary topic is the upcoming budget, but is willing to discuss anything that is town related. He also reminded everyone to shop local and buy American.*  
*Mayor Ryder – Wanted to congratulate the Hampden Academy Unified Team for winning the gold ball for the second year in a row. He also wanted to thank Ralph Arbo who has stepped up and offered to build picnic tables for the town, strictly as a volunteer.*
- H. ADJOURNMENT** – *Councilor Sirois made a motion, seconded by Councilor McAvoy to adjourn at 7:50 p.m. Unanimous vote in favor.*

Respectfully Submitted,



Paula A. Scott  
Town Clerk