

## TOWN COUNCIL MINUTES

OCTOBER 6, 2008

The regularly scheduled meeting of the Hampden Town Council was held on Monday, October 6, 2008. The meeting was held at the municipal building council chambers and was called to order by Mayor Briggs at 7:00 p.m.

**Attendance: Councilors:** Mayor Rick Briggs, Andrew Colford, Matthew Arnett, Thomas Brann, Andre Cushing, Shannon Cox and Edward Murphy

**Town Manager:** Susan Lessard

**Town Counsel:** Thomas Russell

**Department Heads/Staff:** Public Works Director Galen Swan, Pool Director Darcey Peakall, Code Enforcement Officer Ben Johnson

Steve Eyles and Ryan Armstrong of Goodwill Riders Snowmobile Club, George Ray of Ray's Plumbing, Michael Levesque and citizens

### A. CONSENT AGENDA

Treasurer's Warrants were circulated for approval and signatures of the Finance Committee. The Consent Agenda was accepted without objection.

### B. PUBLIC COMMENTS

Steve Eyles, Trailmaster for Goodwill Riders Snowmobile Club informed the Council that the Club wants to move a portion of the current snowmobile trail near Reed's Brook in order to avoid the recent residential expansion on Constitution Avenue. The Club proposes moving the existing trail from the north side of Reed's Brook to the south side over Town-owned land. This item will be placed on the agenda for the next Council meeting.

### C. POLICY AGENDA

#### 1. PUBLIC HEARINGS

There were none.

#### 2. NOMINATIONS-APPOINTMENTS-ELECTIONS

##### a. WARRANT FOR MUNICIPAL ELECTION – 11/4/08

The Warrant was circulated for signatures of the Council.

### 3. UNFINISHED BUSINESS

#### a. APPLICATION FOR RENEWAL OF LIQUOR LICENSE RECEIVED FROM BEST WESTERN WHITE HOUSE INN

Motion by Councilor Brann, seconded by Councilor Cushing to waive the public hearing – unanimous vote in favor.

Motion by Councilor Arnett, seconded by Councilor Brann to approve the license – unanimous vote in favor.

#### b. 2003 CROWN VICTORIA BID RESULTS

Bids were opened on October 3<sup>rd</sup> for the sale of a 2003 Crown Victoria. Public Works Director Chip Swan recommended acceptance of the high bid from Jerry Blackburn in the amount of \$507.00 and noted that the proceeds should go to the Public Safety Department. Councilor Cushing so moved; Councilor Arnett seconded the motion and vote was unanimously in favor.

#### c. TOLLING & STANDSTILL AGREEMENT 2008 – MALLINCKRODT, LLC

Attorney Russell has reviewed the revised agreement and recommended signing it. Motion by Councilor Arnett, seconded by Councilor Cushing to approve the agreement and authorize the Town Manager to sign on behalf of the Town – unanimous vote in favor.

#### d. AIR COMPRESSOR BID RESULTS

Bids were opened on October 3<sup>rd</sup> and only one bid was received. Public Works Director Chip Swan recommended acceptance of the bid from Jerry Blackburn in the amount of \$27.50 with the proceeds to go to the Public Works Department. Councilor Murphy so moved; Councilor Brann seconded the motion and vote was unanimously in favor.

#### e. LURA HOIT POOL HEATING BID RESULTS

Public Works Director Chip Swan reported that there were two bidders for the heating system at the pool. He had requested bids for two different options – 1) replacement of one boiler with a System 2000 boiler; and 2) replacement of both boilers with two System 2000 boilers. However, Ray's Plumbing added a bid for a third option which was to install two System 2000 boilers and adding a smaller boiler for a total of \$42,210.00. He asked George Ray from Ray's Plumbing and Heating to explain the different options for the Council's consideration. Following Mr. Ray's explanation of the benefits of the third option and the fuel cost savings that could be realized, Chip recommended accepting the bid for Option #3 from Ray's Plumbing & Heating.

**2008 TOLLING AND STANDSTILL AGREEMENT**

This 2008 Tolling and Standstill Agreement (“Agreement”) is made by and among Mallinckrodt LLC and Town of Hampden (sometimes collectively referred to herein as the “Parties” or individually as the “Party”), whose authorized representatives have executed this Agreement.

**WHEREAS**, there is mercury contamination in the Penobscot River and Estuary and in the sediments of the River and Estuary (“Penobscot River Contamination”).

**WHEREAS**, Mallinckrodt LLC believes it may have claims against Town of Hampden for injunctive relief, allocation, cost recovery, damages or contribution relating to the Penobscot River Contamination under applicable law, including but not limited to Section 107 of CERCLA, 42 U.S.C. § 9607, Section 7002 of RCRA, 42 U.S.C. § 6972, and Maine common law.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties mutually agree as follows:

1. During the Effective Period of this Agreement, as defined in Paragraph 3, below, each Party to this Agreement, on behalf of itself, its successors and assigns, covenants not to sue any other Party to this Agreement on any claim or cause of action it may have relating to or arising in connection with the Penobscot River Contamination (“Claim”). This covenant not to sue shall remain in effect up to and including the last calendar day of the Effective Period.

2. In consideration of the foregoing, each Party, on behalf of itself and its successors and assigns, agrees that the Effective Period shall not be included in the calculation of the time that has elapsed for purposes of determining whether any Party’s Claims against it are barred by any applicable statute of limitations, statute of repose, laches, or any other possible bar or restriction based on timing (collectively “timing restrictions”).

3. (a) In the absence of the newly filed litigation situation described in Paragraph 3(b), below, the “Effective Period” shall mean that period of time beginning on July 1, 2008, and continuing to and including the sixtieth (60th) calendar day after the day on which any Party provides notice to the other Party to this Agreement, pursuant to Paragraph 4, below, that it is terminating the Agreement (the day on which notice is provided shall not be included in calculating the sixty (60) calendar day period).

(b) In the event that a lawsuit for claims relating to the Penobscot River Contamination is brought by or against another party or parties, and either Mallinckrodt LLC or Town of Hampden is made or joined as a party, the Effective Period shall mean that period of time beginning on July 1, 2008, and continuing to and including the fifteenth (15th) calendar day after the day on which any Party provides notices to the other Party to this Agreement, pursuant to Paragraph 4, below, that it is terminating the Agreement (the day on which notice is provided shall not be included in calculating the fifteen (15) day calendar period).

4. Each Party has the right to terminate this Agreement at any time. Notice to terminate this Agreement shall be provided by such means that will ensure its timely receipt, and will be deemed to have been provided on the date that the other Parties actually receive the notice. Notice shall be sent to each Party's representative, as designated on Exhibit A. Each Party shall have the right to change its representative upon ten (10) days written notice to the other Parties.

5. This Agreement contains the entire Agreement between the Parties, and this Agreement may not be enlarged, modified, or altered except in writing signed by the Parties.

6. Nothing in this Agreement should be construed as an admission or indication that any timing restriction has begun to run or has expired. Nothing in this Agreement shall be construed as reviving or altering any timing restrictions that expired prior to the date of this Agreement. The Parties agree that nothing in this Agreement shall be construed as an admission of liability, responsibility or fault in connection with the Penobscot River Contamination. The Parties agree that nothing in this Agreement shall be construed as a waiver of any claim, defense, argument or position that any Party may have against any other Party to the Agreement or other entity with respect to the Penobscot River Contamination, except as specifically stated in this Agreement.

7. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

9. This Agreement shall be effective as of July 1, 2008.

10. In the event that no Party terminates this Agreement, pursuant to Paragraph 4 above, the Agreement will automatically expire six (6) years after the day on which the United States District Court for the District of Maine enters its initial order concerning the need for remediation work for the Penobscot River Contamination, in case number 00-69, titled *Maine People's Alliance v. HoltraChem Manf. Co.*

IN WITNESS WHEREOF, the Parties shall cause this Agreement to be executed by their respective duly authorized representatives.

MALLINCKRODT LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Town of Hampden

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**2008 TOLLING AND STANDSTILL AGREEMENT**

**PARTY**  
**Mallinckrodt LLC**

**REPRESENTATIVES**  
Patricia H. Duft, Esq.  
Mallinckrodt LLC  
675 McDonnell Blvd.  
Hazelwood, MO 63042  
Phone: 314-654-6314  
Email: pat.duft@Covidien.com

With a copy to:  
John M. Heyde  
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One S. Dearborn St.  
Chicago, IL 60603  
Phone: 312-853-7716  
Fax: 312-853-7036  
Email: jheyde@sidley.com

**Town of Hampden**

[Name/Address]  
Phone:  
Fax:  
Email:

With a copy to:  
[Name/Address]  
Phone:  
Fax:  
Email:

Following discussion, motion by Councilor Brann, seconded by Councilor Colford to approve the bid for Option #3 from Ray's Plumbing & Heating in the amount of \$42,210.00 to be funded from the Pool Reserve account.

Manager Lessard suggested that any remaining fuel funds in the pool budget could be designated to go back into the reserve account to cover the additional cost of this option. That was added as a friendly amendment to the original motion.

By roll call, vote was 6-1 (Cushing opposed) in favor of the motion as amended.

f. PROGRAMMING AND PROCEDURES FOR HAMPDEN  
GOVERNMENT CHANNEL – REVIEW AND REAUTHORIZATION

The Cable TV Channel policy was approved by the Council on October 15, 2007 for a 12-month period and is due for review.

Motion by Councilor Arnett, seconded by Council Cushing to renew and reauthorize the policy – unanimous vote in favor.

g. FINANCE COMMITTEE

1. LONG-TERM ELDERLY RESIDENT TAX REBATE PROGRAM

The Finance Committee reviewed information provided by the Town Manager concerning two possible options for a tax credit program for elderly, long term residents. Option 1 would be automatically applied to eligible property owners and would be based on an ownership of at least 15 years and the owner must be at least 65 years of age. The credit would be based on a certain valuation, much like the Homestead Valuation. \$10,000, \$15,000 and \$20,000 valuation exemptions were discussed, with a cost ranging from \$48,000 to \$96,000 based on the current mil rate.

Option 2 would add an income component to the program and require proof of receipt of the Maine Tax and Rent Refund.

Committee Chair Brann reported that the Committee is recommending Option 1, with a determination to be made by the full Council as to the appropriate level of valuation exemption.

Motion by Councilor Brann, seconded by Councilor Colford that the Council adopt Option #1 to provide a long-term resident tax credit program and to put into ordinance language, with the length of residency and exemption level to be discussed at a future time.

During discussion, Councilor Arnett said he supports Option #1 over Option #2, but he does not favor doing this during this current economic time. Councilor Cox expressed some reservation and felt that there should be some sort of income component rather than

granting the same benefit regardless of income level. Following further discussion, Mayor Briggs called for a roll-call vote and the motion passed 5-1 (Cox opposed).

## 2. SEWER USER RATE INCREASE NEEDED IF BOND PASSES

This item was informational only. Councilor Brann reported that if the sewer bond passes in November, a sewer user rate increase of approximately \$18.75 per quarter will be required for an average user.

## 3. POOL FEES RATE INCREASE

Councilor Brann reported that the Finance Committee has reviewed the fee increase requested by the Pool and is recommending approval of the fees (copy attached).

Following a lengthy discussion, Councilor Brann moved to approve the increases in rates for this year. Councilor Murphy seconded the motion and vote was 5-2 (Arnett and Cox opposed) – motion carried.

### h. APPLICATION FOR RENEWAL OF OUTDOOR WOOD BOILER LICENSE RECEIVED FROM PATRICK AUDET

Motion by Councilor Brann, seconded by Councilor Arnett to approve the application – unanimous vote in favor.

## 4. NEW BUSINESS

### a. LIBRARY TRUSTEE/TREASURER RESIGNATION

Due to health issues, Bion Foster submitted his resignation from the Dyer Library Board of Trustees. Motion by Councilor Cox, seconded by Councilor Cushing to accept the resignation – unanimous vote in favor.

### b. OUTDOOR WOOD BOILER – MICHAEL LEVESQUE

Michael Levesque of 1 Deer Hill Lane has submitted an application for a new outdoor wood-fired boiler which would not meet the setback requirements set forth in the ordinance. Mr. Levesque is part owner of abutting properties from which he cannot meet the setback and asked the Council to determine whether the property line setback could be measured from only properties which are not in some sort of common ownership. Attorney Russell pointed out that these are two separate and distinct lots owned by two different entities even though Mr. Levesque is part owner of the other lot. He advised that the property line setbacks would have to be met under the ordinance.

Motion by Councilor Murphy, seconded by Councilor Brann to deny the application based upon setback; vote was 6-1 (Cushing opposed) – motion carried.

ARTICLE 8  
POOL  
Amended 11-17-03, 4-4-05

C-3-g-3

8.1. **Pool Fee Waiver/Scholarship Policy:** Any person interested in Lura Hoit Pool's resident swim lessons (8.9) and non-resident swim lessons (8.10) that feels they do not have the financial means to afford the full fee shall receive a waiver/scholarship at the sole discretion of the Pool Director to be paid for with the scholarship fund. Full or partial fee waivers may be given as determined by financial need for the learn to swim program only.

<b>8.2. Annual Resident Membership Fees:</b>		<b>New Fees</b>
8.2.1. Family	\$250.00	\$255
8.2.2. Single Adult	\$150.00	\$155
8.2.3. High School Student	\$125.00	none
8.2.4. Youth thru Grade 8	\$100.00	none
New Youth/Teen		\$120
8.2.5. Senior	\$140.00	\$145
<b>8.3. Six Month Resident Membership Fees:</b>		
8.3.1. Family	\$150.00	\$155
8.3.2. Single Adult	\$90.00	\$95
8.3.3. High School Student	\$75.00	none
8.3.4. Youth thru Grade 8	\$60.00	none
New Youth/Teen		\$75
8.3.5. Senior	\$85.00	\$90
<b>8.4. Three Month Resident Membership Fees:</b>		
8.4.1. Family	\$90.00	\$95
8.4.2. Single Adult	\$55.00	\$60
8.4.3. High School Student	\$45.00	none
8.4.4. Youth thru Grade 8	\$35.00	none
New Youth/Teen		\$50
8.4.5. Senior	\$50.00	\$55
<b>8.5. Annual Non-Resident Membership Fees:</b>		
8.5.1. Family	\$275.00	\$280
8.5.2. Single Adult	\$175.00	\$180
8.5.3. High School Student	\$150.00	none
8.5.4. Youth thru Grade 8	\$125.00	none
New Youth/Teen		\$145
8.5.5. Senior	\$165.00	\$170
<b>8.6. Six Month Non-Resident Membership Fees:</b>		
8.6.1. Family	\$165.00	\$170
8.6.2. Single Adult	\$105.00	\$110
8.6.3. High School Student	\$90.00	none
8.6.4. Youth thru Grade 8	\$75.00	none
New Youth/Teen		\$90
8.6.5. Senior	\$100.00	\$105

<b>8.7.</b>	<b>Three Month Non- Resident Membership Fees:</b>		<i>New</i>
8.7.1.	Family	\$100.00	\$105
8.7.2.	Single Adult	\$65.00	\$70
8.7.3.	High School Student	\$55.00	none
8.7.4.	Youth thru Grade 8	\$45.00	none
New	Youth/Teen		\$60
8.7.5.	Senior	\$60.00	\$65
<b>8.8.</b>	<b>Daily Swim Fee during family or lap swim times</b>		
8.8.1.	Single Swim - Resident	\$3.00	\$4.00
8.8.2.	Single Swim – Non-Resident	\$4.00	\$5.00
8.8.3.	Resident 12 Use Punch Card	\$25.00	\$30
8.8.4.	Non-Resident 12 Use Punch Card	\$30.00	\$36
<b>8.9.</b>	<b>Resident Swim Lessons (8 Classes):</b>		
8.9.1.	Members	\$20.00	\$25
8.9.2.	Non-Members	\$30.00	\$35
<b>8.10.</b>	<b>Non-Resident Swim Lessons (8 Classes):</b>		
8.10.1.	Members	\$25.00	\$30
8.10.2.	Non-Members	\$35.00	\$40
<b>8.11.</b>	<b>Resident Adult Aqua Aerobics (10 Classes):</b>		
8.11.1.	Members	\$20.00	\$25
8.11.2.	Non-Members	\$25.00	\$30
8.11.3.	Senior Citizen Discount	10%	none
<b>8.12.</b>	<b>Non-Resident Adult Aqua Aerobics (10 Classes):</b>		
8.12.1.	Members	\$25.00	\$30
8.12.2.	Non-Members	\$30.00	\$35
8.12.3.	Senior Citizen Discount	10%	none
<b>8.13.</b>	<b>Adult Aqua Aerobics Drop Ins:</b>		
8.13.1.	Members	\$4.00/class	
8.13.2.	Non-Members	\$5.00/class	
8.13.3.	Senior Citizen Discount	10%	none
<b>8.14.</b>	<b>Gentle Aerobics</b>	\$1.50/class	
<b>8.15.</b>	<b>Pool Facility Rental Fees (Limited Availability):</b>		
8.15.1.	Resident Pool Rental	\$65.00	\$70
8.15.2.	Resident Lounge Rental	\$15.00	\$20
8.15.3.	Non-Resident Pool Rental	\$80.00	\$85
8.15.4.	Non-Resident Lounge Rental	\$20.00	\$25
8.15.5.	Each Additional Lifeguard (As Required by Rules)	\$10.00	\$15
<b>8.16.</b>	<b>Swim Diaper</b>	\$1.00	

An itemized listing of fees for each town department will be submitted to the Town Council by the Town Manager on or before October of each year for the Councils review, revision, and approval.

**c. WATER DISTRICT TRUSTEE RESIGNATION**

Water District Trustee Ken Libbey has resigned from the Water District Board of Trustees. It is up to the Council to appoint someone to fill the remainder of the term. Manager Lessard recommended that we advertise for candidates to fill the vacancy and that the Appointments Committee interview potential candidates. Motion by Councilor Arnett, seconded by Councilor Brann to act on the recommendation of the Town Manager – unanimous vote in favor.

**d. MAINE MUNICIPAL ASSOCIATION – VOTING DELEGATE**

It was decided that Manager Lessard would be the voting delegate for the Town at the Annual MMA Convention and Town Clerk Denise Hodsdon would be the alternate.

**e. PENOBSCOT COUNTY CAUCUS – 2009 BUDGET COMMITTEE**

Motion by Councilor Brann, seconded by Councilor Colford to appoint Councilor Cushing to attend the caucus and to serve on the 2009 Budget Committee – unanimous vote in favor.

**D. COMMITTEE REPORTS**

Councilor Cox reported that the Community Services Committee met several weeks ago with the focus being on Dorothea Dix and the potential work on the trails in the park. The Tree Board is in the process of devising a plan and will bring it back to the Community Services Committee. The next Community Services Committee meeting is scheduled for October 7<sup>th</sup> at 6:30 pm.

Councilor Brann reported that the Comprehensive Planning Committee is on track and making progress.

He further reported that the Finance Committee will meet on October 16<sup>th</sup> at 7:00 pm.

Councilor Arnett reported that the Charter & Ordinance Committee met earlier in the evening and reviewed an update to the Town Way ordinance and Subdivision Ordinance related to building permits and occupancy. The Committee is continuing discussion of the height limitation in the current Zoning Ordinance as it relates to businesses that have a water-dependent use. The Committee's next meeting will be on October 20<sup>th</sup> at 5:45 pm just prior to the Council meeting.

He further reported that the Communications Committee will meet on October 15<sup>th</sup> at 7:00 pm.

Councilor Cushing reported that the Committee on Committees will meet on October 14<sup>th</sup> at 11:30 am and the Economic Development Committee will meet on that same date at 12:30 pm.

**E. MANAGER'S REPORT**

A copy of the Manager's Report is attached.

**F. COUNCILOR'S COMMENTS**

Mayor Briggs reported that he attended the open house for the new methane generation facility at the landfill. He commented that it is a terrific new business in our community and felt it is a benefit to have staff at that facility after the landfill is closed.

Councilor Cox put out a plea for everyone to check in with those people who may be at risk with the current heating crisis.

Councilor Cushing expressed concern about the vote to dedicate unused pool fuel funds to the pool reserve fund. He noted that in the process we have dedicated funds that all taxpayers are paying to a reserve for the pool which services only a segment of the community. He also expressed condolences to the families who have recently lost their loved ones.

**G. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:06 p.m.



Denise Hodsdon  
Town Clerk

## MANAGER'S REPORT

October 6, 2008

Tax Collection – Nearly 50% of property taxes have been collected as of 10/06/08. With the first half due date on October 1<sup>st</sup> – that is a great percentage! Tax Collector Cheryl Johnson and the rest of the staff are to be commended. Reaction to the refreshments provided by staff on Tax Due Date was positive as usual.

Elections – Due to the already-large interest in the upcoming November 4<sup>th</sup> election the Town Clerk has had voting booths set up in the Council Chambers this week for absentee voting. During the week prior to the election she will have additional election staff at the office to facilitate absentee voting as well.

Newsletter – The October edition of the newsletter went to the Post Office on Friday. Many thanks to Annie Gabbianelli O'Reilly and Val Williams and everyone who worked on it.

Tree City USA Flag – The Town Crew put up the flagpole for the Tree City USA flag and that is now flying next to the municipal building.

Candidate's Night – There will be a Candidate's Night here at the Town Office on Monday, October 27<sup>th</sup> at 7 p.m. All candidates for local office as well as local representatives for Senate and House will be invited.

Hampden Business Association – Meet the Candidates – The HBA is having a Meet the Candidates event on Tuesday, October 7<sup>th</sup> at 7:30 at the Town Office from 7:30 to 8:30 a.m.

Hampden Water District/Council Meeting – A reminder to Council members that there will be a meeting between the Water District Trustees and the Town Council on Tuesday, October 14<sup>th</sup> at 6 p.m. here at the Town Office.