

TOWN COUNCIL MINUTES

NOVEMBER 19, 2007

The regularly scheduled meeting of the Hampden Town Council was held on Monday, November 19, 2007. 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, Robert Gilberti, Thomas Brann, Matthew Arnett, Andrew Colford and Shannon Cox. Edward Murphy was absent.

Town Manager: Susan Lessard

Town Counsel: Thomas Russell

Department Heads/Staff: Town Planner Bob Osborne and Public Works Director Chip Swan

Gene Weldon from Lane Construction, Janet Hughes from Hughes Bros., and citizens

A. CONSENT AGENDA

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

B. PUBLIC COMMENTS

There were none.

C. POLICY AGENDA

1. PUBLIC HEARINGS

- a. ZONING ORDINANCE TEXT AMENDMENTS FOR EARTHMOVING, MINERAL EXTRACTION, GRAVEL PIT AND QUARRY STOCKPILING (ARTICLE 3, ARTICLE 4.1.9.2, ARTICLE 4.9, ARTICLE 4.23)

Town Planner Bob Osborne summarized the proposed amendments as set out in his memo to the Town Council dated October 25, 2007 (copy attached). The Planning Board has returned an ought-to-pass recommendation for these amendments. Bob thanked everybody who was involved in this process including the stakeholders who have spent many hours with the Council and Planning Board Committees.

Mayor Briggs noted that the Council received a letter from Wally Jakubas of 67 Ichabod Lane requesting that additional comments be added to his

earlier testimony to the Ordinance Committee. With the consent of the Council Mr. Jakubas' comments were added as part of the public hearing testimony (copy of letter attached).

Mayor Briggs explained the procedure for the public hearing and then opened the hearing.

Proponents – None;

Opponents – Gene Weldon, Environmental Coordinator for The Lane Construction Corporation, who has been involved with this process for over a year, informed the Council that Lane Construction still has several concerns. A copy of his testimony is attached.

General Questions or Comments – Lorenzo Daigle who owns property in Hampden, an old pit made back in the 1950's, wondered if this would affect the old pits. He said he is trying to level it and fix it so he can grow something there and make it look decent.

Town Planner Bob Osborne said if a pit has been inactive and no one seeks to continue to use it as a pit, there is nothing in this ordinance that impacts those properties. He said this essentially regulates ongoing excavation operations.

Janet Hughes from Hughes Bros., who has also been involved in the process over the past year, noted that Mr. Daigle brings up a very good point which does not affect Hughes Bros. They have rescinded on commenting it because it doesn't affect them, but in her opinion Mr. Daigle's gravel pit is affected by this ordinance. She said these are the things she is afraid of for the Town, not for Hughes Bros., because it is those gray areas for the people who own a pit. From her interpretation of the ordinance, Mr. Daigle would need to apply for an earth-moving permit in order to continue to move dirt on his property. She noted that it says in the ordinance that if you move so many vertical feet, if you move a certain area or certain volume of material, more than 200 cubic yards movement, requires a permit. She said more than a 1,000 cubic yards movement in an old pit requires a review by the Planning Board. She said if they are wrong, perhaps that is an area that should be addressed because that is going to cost small pit owners monies. She said if you are a small contractor looking for a small pit, you're not going to be able to open a small pit in the Town of Hampden with these regulations because it's going to be too costly and they won't be able to compete with the local contractors like Lane Construction and Hughes Bros. She said she shouldn't be speaking in favor of their competition, but she thought she would add that.

Town Planner Bob Osborne said he did not mean to suggest that if somebody was doing earth moving in anticipation of construction activity, that they wouldn't have to seek Planning Board approval for that. If in fact, they move more than a certain number of yards of materials or change the grades by more than a certain number of feet of depth, indeed they would have to go to the Planning Board for the earth moving activity. He noted

that is altogether different than getting a pit licensed and annual inspections and registered, etc.

Bob also addressed some of the things Gene Weldon had discussed. One of which is the ongoing stockpile operations. He pointed out that Article 4.9.8. has an exemption "...notwithstanding the one year regulation existing, lawfully established stockpile operations as of the effective date of this amendment may continue to operate and do not require site plan review or an earthmoving permit from the Planning Board. However expansion or relocation of the stockpile operation to a new area would require an earthmoving permit and site plan review."

Bob also addressed noise and said that the primary mechanism to regulate noise with this ordinance is the hours of operation. There are certain nighttime hours when this ordinance would require that an excavation not operate or produce noise beyond its property lines that is objectionable to the neighbors. The rationale for that is to try to peacefully coexist between the folks that are trying to get their kids to bed and the folks that are trying to move materials and have a for-profit business. Bob said he thinks there is room for both. The question of noise as it relates to the Code Enforcement Officer is primarily one of the Town's ability to respond to a complaint and a resolution process to try to get all of the parties involved in one room and say "what can we do about this?" He said it is by no means a high-tech approach to noise. He said it was the Committee's conclusion that if we're going to regulate noise outside of hours of operation, we should have a full-blown town-wide noise ordinance that regulated everybody and didn't single out one industry.

Mayor Briggs asked if the Council had any questions for any of the speakers. Councilor Colford addressed Mr. Weldon's question about Article 4.23.14 Annual Report. He said that the report would provide a record of the status of how everything is going as far as the open holes that we have, what they look like and what are the plans for them? He feels that it would be good for abutting landowners to know that information.

Gene Weldon thanked Bob Osborne for his responses. He said he is interpreting this as "worst case scenario". He said that may not be what it ends up being and it's not from what he ever understood the intent to be, but he's giving what he feels the worst case is for a business like theirs. He said he didn't mean, after all this time, that they are totally against this, but he did want everyone to understand that it is major for a business such as theirs and a lot of small business in the area too.

Janet Hughes said a thought occurred to her regarding the intent of the gravel pit and extraction requirements, that somewhat existing gravel pits had been the sore point of getting rehab and the environment back around suitable for the Hampden residents. She said Mr. Daigle brought up a good point and instead of hindering people like him who want to rehabilitate their gravel pit, perhaps there might be a consideration for an exemption so you don't scare away people who do want to rehabilitate those pits – and there are a lot of old pits.

The hearing was closed.

Mayor Briggs noted that this is a very complicated ordinance and a tremendous amount of hours has been put into it. He hoped that if this moves forward that it become a working document and perhaps some sort of evaluation period should be worked into it.

Councilor Gilberti said that when the whole process started, his major concern was what effect it would have on the particular stakeholders that are operating now and he thanked all of them that have been involved in the process. He said based on the testimony tonight he thinks there is work that still needs to be done. He thinks it is possible to get both the industry and the Town on the same page, but we're not there yet and he said if it does come to a vote tonight, he will vote in opposition.

Councilor Arnett moved that the proposed draft Zoning Ordinance text amendments for earth moving, mineral extraction, gravel pits and quarries and stockpiles be adopted by the Council. Councilor Brann seconded the motion.

Discussion: Councilor Arnett said that if we got in to a court of law, there could be difficult problems here. He said his sense of the Ordinance Committee and the mandate from the Council was to produce a document that allows us to regulate this industry as complaints are made as common sense kinds of concerns come before us – not to try to adopt the stringent cases as Mr. Weldon has sketched. He understands from Gene's standpoint the wisdom of doing that and he can not assure him that the town will never take an action that he would interpret as being extreme. He said it was his sense that that is not at all the intent of the Council's Charter and Ordinance Committee or the Planning Board's Ordinance Committee. It was their intent not to heap burdens upon the industry and wherever possible to make use of existing permitting processes from the State. He said we need to a mechanism in place by which if people have a complaint there is a process of dealing with that complaint.

Councilor Brann said in looking at the written comments that have been provided, there is a considerable amount to take a look at. He would like to have more time to review these comments before voting on it. He moved to postpone the decision on this motion until the next Council meeting. Councilor Gilberti seconded the motion and vote was unanimously in favor.

Motion by Councilor Brann, seconded by Councilor Cox to reopen the public hearing to the next meeting to allow further public comment – Vote: Councilor Arnett abstained – all others in favor – motion carried.

Mayor Briggs then reopened the hearing.

Motion by Councilor Brann, seconded by Councilor Cox to postpone the public hearing to the next meeting – Vote: Councilor Arnett abstained – all others in favor – motion carried.

b. APPLICATION FOR A VICTUALER'S LICENSE RECEIVED FROM
KLITON XHEMALI, d/b/a ANGELO'S PIZZERIA, 102 MAIN ROAD
SOUTH

This item had been continued from the last regular meeting. Motion by Councilor Brann, seconded by Councilor Gilberti to reopen the public hearing – unanimous vote in favor.

Mayor Briggs explained the procedure for the public hearing and then re-opened the hearing.

Proponents – None; Opponents – None; General Questions or Comments – None. The hearing was closed.

Motion by Councilor Brann, seconded by Councilor Gilberti to approve the application for Victualer's License – unanimous vote in favor.

2. NOMINATIONS-APPOINTMENTS-ELECTIONS

a. ELECTION RETURNS – 11/06/07 ELECTION

Town Clerk Denise Hodsdon reported that there were a total of 1740 ballots cast – a 32% turnout. She read the results of each race and referendum question. Motion by Councilor Gilberti, seconded by Councilor Brann to accept the report – unanimous vote in favor. The original return was circulated for signatures of the Council.

Councilor Brann asked for clarification in the election for the vacant Council seat. He noted that because a Councilor has resigned, we had to have a special election to replace that Councilor. However, the special election was held on a date normally scheduled for elections and he wondered if this would be a normal election and the term should be for three years. Attorney Russell advised that it is a special election to fill a vacancy that just happened to occur on the date of the normal election. Councilor Brann noted that since the amendment to the Charter regarding Councilors elected at a special election just passed, should the new person take office at the next regular meeting of the Town Council. He asked if that takes precedence in this case or is it the fact that the policy was not in place at the time of the election that the newly elected Councilor would not take office until the date that the resignation supposedly takes effect? Attorney Russell advised that the Councilor-Elect would take office at the next meeting after the vacancy occurs as technically, there is no vacancy yet.

3. UNFINISHED BUSINESS

a. CONSERVATION COMMISSION – RECOMMENDATIONS FOR
DEVELOPMENT ZONES IN RURAL DISTRICT

Town Planner Bob Osborne noted that the nature of the plan (copy attached) is to set some priorities as to what the Conservation Commission felt were the elements that create rural character for the Town and to insure

the health of its natural communities and wildlife resources. He then characterized the four areas identified in the plan.

Mayor Briggs noted that these four areas as identified and defined meet many of the discussions that he has heard in the Comprehensive planning meetings. Councilor Brann confirmed that they do. He said the definition of the large blocks begins from the state recommended identification for large block areas beginning with habitats and water for planning. Councilor Brann said the modifications to that is an attempt to recognize the fact that there is still a significant potential for development around the edges of those zones without impacting the interior and still provide the opportunity for landowners to develop that land within reason.

Councilor Brann asked for feedback from the Council on these concepts. It was the consensus of the Council that the Committee should continue in this direction. The Conservation Commission feels that it is important to get public input as well.

b. ICHABOD LANE UPDATE

Public Works Director Chip Swan reported that the Public Works crew has marked off and trimmed back the area and it looks really good. He said the road has a good gravel base and the area trimmed was at the shoulder break of the road. Manager Lessard said that following the Council's last meeting, the compromise was to provide as little intrusion to those who use the space for more recreational pursuits, but to also allow passage for the people with legitimate vehicular access and frontage needs. The 20 feet down the center that was identified to be cleared leaves a 20 foot buffer on each side for the abutters.

4. NEW BUSINESS

a. LIBRARY AIR CONDITIONING – REQUEST TO WAIVE BID PROCEDURE

Public Works Director Chip Swan informed the Council that prior to his employment the library had requested bids for an air conditioning system. They received two quotes, but they were totally different proposals so former Public Works Director Greg Nash had asked Carpenter Associates to do a study of the proposals. They determined that the two proposals were so different they weren't bidding on the same item. Chip had Carpenter Associates assess the library and come up with a plan. Their engineering fee would be \$6,000 and because of the work this firm has already done, Chip requested that the Council waive the bid procedure for this service. He said the Library Trustees have met and endorsed the proposal.

Motion by Councilor Brann, seconded by Councilor Arnett to waive the bid procedure for the design phase – unanimous vote in favor.

Motion by Councilor Brann, seconded by Councilor Gilberti to award the project to Carpenter Associates, not to exceed \$6,000, with funding to come from the Library Reserve account – unanimous vote in favor.

b. MUNICIPAL REVIEW COMMITTEE BALLOT

Motion by Councilor Brann, seconded by Councilor Gilberti to cast a vote for Susan Lessard – unanimous vote in favor.

D. COMMITTEE REPORTS

Councilor Colford reported that the Public Works Committee met earlier in the evening with the Public Works Director and they are making good progress. The next meeting is scheduled for 6:00 pm on December 3.

Councilor Arnett reported that the Community Services/Comprehensive Planning Committee met with the consultant and reviewed the transportation section of the Comprehensive Plan. It was decided that the old model was not action oriented and Committee is revisiting all of those sections. The goal is to consider two sections at each of the next meetings and the Town Planner and consultant will work between meetings. They hope to be done in approximately three months.

Councilor Gilberti reported that the Penobscot County Budget Committee has completed the budget. He said the largest department increase was in communications because of a lot of changes that need to be made. They don't have an exact mil rate yet, but based on approximations it looks like it will be going down, however the town's valuation went up so we may have an increase in the county budget.

E. MANAGER'S REPORT

A copy of the Manager's Report is attached.

Manager Lessard also informed the Council that the property owned by Mr. Daigle has a mobile home on it which he does not own and the owner is not living in it. The Town is in foreclosure on this mobile home and Mr. Daigle is requesting that the Town perfect the foreclosure. She will agenda this for the next Council meeting.

F. COUNCILOR'S COMMENTS

Councilor Arnett said he would like to see the Council review the list of goals and objectives identified at its special meeting as we move toward the planning and budgeting period for next year. He would like to see a more formal capital budgeting process. Additionally, he would like to start discussions in December regarding Council committee assignments for next year.

Mayor Briggs wished everybody a Happy Thanksgiving and expressed appreciation to all Town employees, volunteers, the Town Manager and staff.

G. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:18 p.m.

Denise Hodsdon
Town Clerk