

Planning and Development Committee
August 21, 2013
6:00 PM
Council Chambers
AGENDA

1. Approval of August 7, 2013 Minutes
2. Committee Applications
3. Updates
4. Old Business
 - A. Noreen Norton – Categorical Allocation Discussion on Bangor Hydro TIF
 - B. Fireworks Discussion – Joe Rogers
5. New Business:
 - A. Access to former Clendenning property.
 - B. Title 17: Dangerous Buildings
6. Comprehensive Plan Implementation
 - A. Re-Zoning – District Amendments
7. Citizens Initiatives:
8. Public Comments:
9. Committee Member Comments:
10. Adjourn

Planning and Development Committee
August 7, 2013
6:00 PM
Council Chambers
MINUTES

Attendees:	<u>Committee</u>	<u>Staff</u>
	Tom Brann Bill Shakespeare David Ryder	Tom Russell Bob Osborne Dean Bennett

1. **Approval of July 17, 2013 Minutes** – Approved
2. **Committee Applications** – There were no committee applications under review.
3. **Updates**
4. **Old Business**
 - A. Executive Session pursuant to 1.M.R.S.A. §405 (6) (C) to discuss an Economic Development Proposal. (Hampden Business Park).
Committee Action: Motion and second to enter Executive Session @ 7:24pm. Motion and second to end Executive Session @ 8:27pm.
 - B. Fireworks Ordinance – Item Requested (Ellsworth)

The Ellsworth's described their continued frustration with neighborhood fireworks and the disruption they cause to themselves and their animals. They requested further action of the Committee. The Committee members viewed the issue as a Council item and more of a civil issue than land use.

Committee Action: Committee to request Chief Rogers to attend the next P&D Meeting to discuss his perspective on the situation. Next meeting is scheduled for August 21, 2013.

5. New Business:

A. Ammo Park Discussion – Peter Thornton

Peter Thornton expressed his interest and need for municipal water, sewer and potentially natural gas within the Ammo Industrial Park. He inquired as to whether the town would be willing to work with him in allowing the connections to be tied into the Hampden Business and Commerce Park. Committee members expressed their support of Mr. Thornton's intentions.

B. Signs: Marina/Mecaw Road

CEDD requested support of the Committee for him to engage in discussions with McLaughlins Seafood and Hamlin Marine with regard to a municipal sign at the entrance of Turtle Head Marina. Design and shared costs to be discussed. Committee indicated their support for the discussion.

CEDD shared his discussion with the owner of Bangor Tennis in regard to the need for greater exposure in signage from Route 202. CEDD suggested the exploration of MDOT signage as an alternative solution as State Law precludes signs being placed off premise.

6. Comprehensive Plan Implementation

A. Re-Zoning – District Amendments

Town Planner provided materials to assist the Committee with the upcoming walking tour of a few specific areas of town. Town Planner suggested the Committee actually walk the areas of potential zoning change prior to discussion and Committee agreed. Walking tour scheduled for Wednesday August 14, 2013.

Tour to be publically posted in accordance with state and local requirements.

7. Citizens Initiatives: - none

8. Public Comments - none

9. Committee Member Comments: - none

10. Adjourn

17 §2851. DANGEROUS BUILDINGS

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Whenever the municipal officers in the case of a municipality, or the county commissioners in the case of the unorganized or deorganized areas in their county, find that a building or structure or any portion thereof or any wharf, pier, pilings or any portion thereof that is or was located on or extending from land within the boundaries of the municipality or the unorganized or deorganized area, as measured from low water mark, is structurally unsafe; unstable; unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property, they may after notice and hearing on this matter adjudge the same to be a nuisance or dangerous and may make and record an order prescribing what disposal must be made of that building or structure. [1997, c. 6, §1 (AMD) .]

1. Notice. The notice must be served on the owner and all parties in interest, as defined in Title 14, section 6321, in the same way service of process is made in accordance with the Maine Rules of Civil Procedure.

[1997, c. 6, §1 (AMD) .]

2. Notice; how published. When the name or address of any owner or co-owner is unknown or is not ascertainable with reasonable diligence, then the notice must be published once a week for 3 successive weeks prior to the date of hearing in a newspaper generally circulated in the county, or if none, in the state paper.

[1997, c. 6, §1 (AMD) .]

3. Order. The order made by the municipal officers or county commissioners must be recorded by the municipal or county clerk, who shall cause an attested copy to be served upon the owner and all parties in interest in the same way service of process is made in accordance with the Maine Rules of Civil Procedure. If the name or address cannot be ascertained, the clerk shall publish a copy of the order in the same manner as provided for notice in subsection 2.

[1997, c. 6, §1 (AMD) .]

4. Proceedings in Superior Court. In addition to proceedings before the municipal officers or the county commissioners, the municipality or the county may seek an order of demolition by filing a complaint in the Superior Court situated in the county where the structure is located. The complaint must identify the location of the property and set forth the reasons why the municipality or the county seeks its removal. Service of the complaint must be made upon the owner and parties-in-interest in accordance with the Maine Rules of Civil Procedure. After hearing before the court sitting without a jury, the court shall issue an appropriate order and, if it requires removal of the structure, it shall award costs as authorized by this subchapter to the municipality or the county. Appeal from a decision of the Superior Court is to the law court in accordance with the Maine Rules of Civil Procedure.

[1997, c. 6, §1 (AMD) .]

SECTION HISTORY

1965, c. 284, (RPR). 1967, c. 401, §1 (AMD). 1973, c. 143, §1 (AMD).
1979, c. 27, §§1-3 (AMD). 1997, c. 6, §1 (AMD) .

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17 §2852. APPEAL; HEARING

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An appeal from a decision of the municipal officers or county commissioners must be to the Superior Court, pursuant to the provisions of the Maine Rules of Civil Procedure, Rule 80B. [1997, c. 6, §2 (AMD) .]

SECTION HISTORY

1965, c. 284, (RPR) . 1979, c. 27, §4 (RPR) . 1997, c. 6, §2 (AMD) .

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17 §2853. MUNICIPAL OFFICERS MAY ORDER NUISANCE ABATED
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If no appeal is filed, the municipal officers of such municipality shall cause said nuisance to be abated or removed in compliance with their order, and all expenses thereof shall be repaid to the municipality by the owner or co-owner within 30 days after demand or a special tax may be assessed by the assessors against the land on which said building was located for the amount of such expenses and such amount shall be included in the next annual warrant to the tax collector of said town for collection, and shall be collected in the same manner as other state, county and municipal taxes are collected. [1967, c. 401, §2 (AMD).]

In the case of any claim for expenses incurred in the abatement or removal of any wharf, pier, pilings or any portion thereof which extends beyond the low water mark, the special tax authorized by this section shall apply to the land from which such wharf, pier or pilings extended or to which they were adjacent, provided the owner of the land is also the owner of the said wharf, pier, pilings or portion thereof. [1973, c. 143, §2 (NEW).]

Expenses shall include, but not by way of limitation, the costs of title searches, location reports, service or process, costs of removal of the structure, any costs incurred in securing the structure, pending its removal, and all other costs incurred by the municipality which are reasonably related to the removal of the structure. In addition to levying a special tax, the municipality may recover its expenses, including its reasonable attorney's fees, by means of a civil action brought against the owner. [1979, c. 27, §5 (NEW).]

SECTION HISTORY

1965, c. 284, (RPR). 1967, c. 401, §2 (AMD). 1973, c. 143, §2 (AMD).
1977, c. 707, §§5-A (AMD). 1979, c. 27, §5 (AMD).

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17 §2854. COSTS

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(REPEALED)

SECTION HISTORY

1965, c. 284, (RP).

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17 §2855. ENTRY INTO FORCE BY TOWN VOTE

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SECTION HISTORY

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17 §2856. SECURING DANGEROUS STRUCTURES

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In addition to other proceedings authorized by this subchapter, a municipality shall have the right to secure structures which pose a serious threat to the public health and safety and to recover its expenses in so doing as provided in this subchapter. If a building is secured under this section, notice, in accordance with section 2851, subsection 1, shall be given. This notice need not be given before securing the structure if the threat to the public health and safety requires prompt action. [1979, c. 27, §6 (NEW) .]

SECTION HISTORY

1979, c. 27, §6 (NEW) .

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17 §2857. RECORDING OF NOTICE

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The municipal clerk shall cause an attested copy of the notice to be recorded in the Registry of Deeds located within the county where the structure is situated. Recording of this notice shall be deemed to put any person claiming under the owner of a structure subject to proceedings under this subchapter on notice of the pendency of the proceedings. [1979, c. 27, §6 (NEW).]

SECTION HISTORY

1979, c. 27, §6 (NEW).

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17 §2858. CONSENT TO REMOVAL

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The owner and parties-in-interest of a dangerous structure may consent to its removal and to the recovery of the expenses incurred by a municipality by means of a special tax as set forth in this subchapter. Notices of the consent shall be recorded in the Registry of Deeds located in the county where the structure is situated. [1979, c. 27, §6 (NEW) .]

SECTION HISTORY

1979, c. 27, §6 (NEW) .

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17 §2859. SUMMARY PROCESS

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In cases involving an immediate and serious threat to the public health, safety or welfare, in addition to any other remedies, a municipality may obtain an order of demolition by summary process in Superior Court, in accordance with this section. [1981, c. 43, (NEW) .]

1. Commencement of action. A municipality, acting through its building official, code enforcement officer, fire chief or municipal officers, shall file a verified complaint setting forth such facts as would justify a conclusion that a building or structure is "dangerous," as that term is defined in section 2851; and shall state in the complaint that the public health, safety or welfare requires the immediate removal of that building or structure.

[2007, c. 2, §5 (COR) .]

2. Order of notice. Whenever a complaint is filed under this section, the justice before whom it is brought, acting ex parte, shall promptly issue an order:

A. Requiring the owner and all parties-in-interest, as that term is defined in the statutes governing foreclosure by civil action, to appear and show cause why the building or structure should not be ordered demolished; [1981, c. 43, (NEW) .]

B. Specifying the method of service of the order and the complaint; [1981, c. 43, (NEW) .]

C. Setting a time and place for hearing the complaint, which shall be the earliest possible time but not be later than 10 days from the date of filing; and [1981, c. 43, (NEW) .]

D. Fixing the time for filing an answer to the complaint if the court determines that an answer is required. [1981, c. 43, (NEW) .]

3. Enlargement of time; default. The court may for good cause shown enlarge the time for the hearing. If the owner or parties-in-interest, or any of them, fail to answer, if an answer is required, or fail to appear as directed, or to attend the hearing at the time appointed or as enlarged, the court shall order a default judgment to be entered with respect to the owner or parties-in-interest.

[1981, c. 43, (NEW) .]

4. Hearing. After hearing, the court shall enter judgment. If the judgment requires removal of the building or structure, the court shall award costs to the municipality as authorized by this subchapter. The award of costs may be contested and damages sought in a separate action to the extent permitted by subsection 7.

[1981, c. 43, (NEW) .]

5. Appeal. No judgment requiring demolition issued pursuant to this section may be appealed. The owner of a building or structure which is the subject of an order issued under this section, or a party-in-interest, may appeal the award of costs, if any, or seek damages for wrongful removal pursuant to subsection 7.

[1981, c. 43, (NEW) .]

6. Stay. No judgment authorizing demolition may be stayed pending appeal, unless the court first determines that granting a stay would not pose a significant risk to the public health, safety or welfare.

[1981, c. 43, (NEW) .]

7. Damages. Any complaint that either seeks damages for the wrongful removal of a building or structure or challenges the award of costs must be filed no later than 30 days from the date of the judgment or order that is the subject of the appeal. The damages that may be awarded for wrongful demolition are limited to the actual value of the structure at the time of its removal. The provisions of Title 14, section 7552 do not apply. If the municipality should prevail, the court may award it its costs in defending any appeal which may include, but are not limited to, reasonable attorney's fees.

[1995, c. 450, §6 (AMD) .]

SECTION HISTORY

1981, c. 43, (NEW) . 1995, c. 450, §6 (AMD) . RR 2007, c. 2, §5 (COR) .

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