



HAMPDEN TOWN COUNCIL MINUTES

Monday, November 14, 2011

Attending:

Mayor Janet Hughes

Councilor Andre Cushing

Councilor William Shakespeare

Councilor Jean Lawlis

Robert Osborne, Planner

Residents

Councilor Kristen Hornbrook

Councilor Tom Brann

Councilor Shelby Wright

Town Manager Susan Lessard

Town Attorney, Tom Russell

The meeting was opened at 7:30 p.m. by Mayor Hughes.

Request by Councilor Shakespeare to pull item A. 3. e. for discussion.

Motion by Councilor Cushing, seconded by Councilor Wright to accept the balance of the consent agenda. Vote 6 – 0.

Councilor Shakespeare read into the record the following email letter from Bernie Philbrick to the Town Council dated Friday, October 28th, as follows:

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

Bernie Philbrick <elcobern@aol.com>

Fri, Oct 28, 2011 at 3:03 PM

To: hornbrooktowncouncil@hampdenmaine.gov, andrec@hampdenmaine.gov,
shakespearetowncouncil@hampdenmaine.gov, hughestowncouncil@hampdenmaine.gov,
wrighttowncouncil@gmail.com, branntowncouncil@hampdenmaine.gov, lawlistowncouncil@gmail.com

Kristen,

As you always perform due diligence in whatever task you set your mind to, I am sure you have reviewed the Town Charter in regards to "executive sessions". I also have reviewed "Section 211 Procedure" in our Town Charter where executive session are discussed. It appears that executive session should only be used to discuss town personnel, whereas the subject matter could be considered defaming to this person. Whatever the purpose, the public should be notified of a meeting and the said agenda. To not follow this rule is criminal and fraudulent to the public.

I did not see anything where the Charter allows Mayor Hughes or other Council Members to engineer elections behind closed doors. This is a very serious breach of law for elected officials to partake in and this is not the first time. Although the Town Clerk is in charge of our local elections. One must consider the past bias the Town Clerk has shown with her multiple sets of election rules and in doing so I would not show her what you know, yet. This is something that should be handled by an authority higher up. Perhaps the AG would be of some help for our Town to proceed in the future, legally, without bias, where all of the citizens in Hampden are treated as equals and enjoy equal opportunities. Until then our little Town will continue to be known as the Banana Republic.

On another note, a few weeks ago while at the grocery store in Hampden, I ran in to a Town Office employee who informed me of some startling information which I brushed off as rumor at the time. After reading your email I am thinking this rumor may have some value or merit behind it. Apparently Susan Lessard did not quit her job as Town Manager. It was simply a ruse to gain sympathy of the Townspeople and also to cast doubt on those who stand for property rights in our town. Lessard's ploy (which I am told was a calculated effort with Tom Brann and Mayor Hughes) was to announce her resignation. The BDN bought this ploy 100% when they printed the article about her. BUT the Town Council never voted to accept her resignation! So much like the 2001 & 2010 Comp Plans, Lessard's resignation has a cover but lacks anything in between. This is all eerily similar to Brann, Shakspeare and Mayor Hughes announcing in the BDN that they would not seek re-election. Basically they are a bunch of liars and use the BDN as their tool!

Back to Lessard. Apparently she has been telling people that she does not intend to leave her position as Manager pending the outcome of this election. If the successful candidates are in her favor she will decide to stay in Hampden, should the election fall in another direction she will pack her bags and leave. What does this say about Lessard's integrity? If she can't push her ultra liberal land grabbing agenda she can't find a way to remain *neutral*? Should Town Managers have an agenda other than the will of the people. So, does this point to a conflict of interest or a reason to engineer elections and keep your 4 day a week job? Does this indicate wasteful spending with the MMA looking for a replacement manager when one knowingly may not be needed if Lessard can gain favor via the election? Was the Lessard resignation paper not voted on by the Council because of: 1) Complete ignorance or 2) Fraudulent activities within our Town Office?

This seems to be a never ending story with Manager Lessard and her loyal subjects on the Council. Now instead of simply being rude and unprofessional, their actions have breached criminal.

Bernie Philbrick

Motion by Councilor Cushing, seconded by Councilor Wright to accept consent agenda item

A. 3. e. Vote 7 – 0.

A. CONSENT AGENDA

1. SIGNATURES

2. SECRETARY'S REPORTS

3. COMMUNICATIONS

- a. Special Council Meeting 10/25/2011 Legal Opinion
- b. Executive Session – Attorney Response to Question from Councilor Hornbrook
- c. Legal Opinion – Applicability of Title 21-A – Write-in Candidates
- d. Legal Opinion – Follow up to Write-in Candidate Opinion
- e. Email regarding Manager Resignation – Bernie Philbrick
- f. Email regarding 10/25/2011 meeting – Councilor Hornbrook
- g. Email Request – Information related to Finance & Administration Committee – Councilor Hornbrook
- h. Email Request – Payments to Hughes Brothers – Lisa Carter
- i. Email Request – Cable TV Franchise Agreement, Maine Municipal Association Manager Search Contract, Town Attorney Contract, Information on Special Meetings, Regular Meetings and Executive Sessions from 7/2001 to present – Terry McAvoy
- j. Email Request – Manager Resignation information/terms/etc – Larry Gard, Citizen’s Journal
- k. Email Request – Campaign Sign Information requests – Lisa Carter
- l. Information Request – Bid Information 2007-Present – Lisa Carter
- m. Email Request – Write-in Candidate Information – Michael Levesque
- n. Email Request – Setback from Polling Place for Signs – Cynthia Philbrick
- o. Email Request – Zoning Change Information – Ruth Stearns
- p. Information Request – Tree Cutting Penalties – Dept. of Conservation
- q. Lura Hoit Pool – Fundraising Letter
- r. Senator Plowman – Legislative Summary
- s. Cold Brook Road Speed Zone Review – 10/24/2011
- t. Freedom of Information Request – Emails regarding 10/25/2011 Meeting – Larry Gard, Citizen’s Journal
- u. Information Request re: Police Officers at Meetings – Councilor Hornbrook
- v. Information Request – Budget Information – Peter Frazier
- w. DEP/Gulf Oil Limited Partnership – Air Emission License Renewal

4. REPORTS

- a. Finance Committee Minutes – 10/17/2011
- b. Infrastructure Committee Meeting Minutes – 10/24/2011
- c. Semi-Annual Water District/Council Meeting Minutes – 10/24/2011
- d. Landfill Complaint Report – September 2011
- e. Lura Hoit Pool Trustees Minutes – 9/8/2011
- f. Edythe Dyer Library Trustees Minutes – 9/24/2011

B. PUBLIC COMMENTS - *None*

C. POLICY AGENDA

1. PUBLIC HEARINGS

- a. Zoning Ordinance Text Amendment – Article 3.3.3 Commercial Services Conditional Uses –Addition of Church to the Contemplated Uses of the District. *Town Planner Robert Osborne introduced the proposed change which proposes to add churches as a conditional use in the Commercial Services District. The Planning Board recommendation for this item was a unanimous ought-to-pass. The Public Hearing was opened by Mayor Hughes.*
Proponents – None
Opponents – None
Neither for nor against – None
Mayor Hughes closed the public hearing.
Motion by Councilor Brann, seconded by Councilor Cushing to approve adoption of the proposed text amendment for Article 3.3.3 as presented. Vote 7 – 0.

- b. Application for Victualers License received from Sub Street, Inc. d/b/a Subway of Hampden at 7 Western Avenue. *The Public Hearing was opened by Mayor Hughes.*
Proponents – None
Opponents – None
Neither for nor against – None
Mayor Hughes closed the public hearing.
Motion by Councilor Cushing, seconded by Councilor Brann to grant a victualers license to Sub Street, Inc. d/b/a Subway of Hampden. Councilor Shakespeare asked why a public hearing was being held for a victualer’s license since the business had been there more than five years. The Town Manager responded that that the public hearing was due to an ownership change. Vote 7 – 0.

- c. Application for Victualers License received from Elisaveta Turlla d/b/a Angelo’s Pizzeria at 102 Main Road South – *Postponed until 11-21-2011 meeting.*

2. NOMINATIONS – APPOINTMENTS – ELECTIONS

- a. 11/8/2011 Election Results – *The Town Manager read a prepared statement that was sent to candidates and the Town Council, as follows:*

TO: Hampden Town Council
 FROM: Sue Lessard, Town Manager
 DATE: 11-14-2011
 RE: Questions regarding 11-08-2011 Election

The purpose of this memo is to bring the Council up to date on a question that has been raised as to voters being given the wrong ballot for their voting district on November 8th. I received an email from candidate Mark Gray’s wife Kim who indicated that he had received a call telling him that persons from District II had been given ballots from District I. I told Mrs.

Gray that I would forward the information to the Town Clerk and the Town Attorney for response. Subsequently, I received an email from Mark Cormier indicated that his parents, who live on Evergreen Drive, had received a District 1 Ballot instead of a District II ballot and that his father would be in on Monday to discuss it. I responded to Mark that I would forward the email to the Town Clerk and the Town Attorney for response and that we looked forward to seeing his father on Monday.

In order to determine whether or not there is a significant problem with the issuance of ballots, the Town Clerk will be sorting the incoming voter list from the election by district to get a count of the number of voters from each district that appeared at the polls. Those numbers will be compared to the number of ballots tallied for each district. The incoming voters list is currently sealed by the Secretary of State's Office as part of regular election law that requires it to be sealed for five business days following an election. That list will not be released until 5 p.m. on Wednesday, after which the above-cited work will be done.

Although it has been custom and practice for the Town Council to 'approve' election results at the first Council meeting held after an election, there is no statutory requirement or authority for that action. The Warden certifies the election as of the close of the election on voting day, which was November 8th. Candidates will have five business days from the close of the election to request a recount. In the case of the Town of Hampden, that deadline would be 6 p.m. on Thursday, November 17th. That is calculated by counting Wednesday, November 10th as Day 1, Monday, November 14th as Day 2 (since the office was closed Thursday and Friday), Tuesday, November 15th as Day 3, Wednesday, November 16th as Day 4, and Thursday, November 17th as Day 5. All candidates have been apprised of this information.

Motion by Councilor Cushing, seconded by Councilor Lawlis to postpone action on this item until after information is verified by the Town Clerk. Vote 7 – 0.

3. UNFINISHED BUSINESS

- a. *Contract for Sale of Lot 5, Hampden Business Park – Planning & Development Committee Recommendation – Mayor Hughes and Councilor Brann explained that terms of the lot sale proposed to Central Maine Diesel. Town Attorney Russell suggested that two changes be made to the agreement to make it consistent with other purchase/sales agreements done for sale of lots in the business park. Those two items were a pro-rated amount in lieu of property taxes and a change to the document for the allocation of transfer tax responsibility. Motion by Councilor Brann, seconded by Councilor Lawlis to sell lot five in the business park to Central Maine Diesel for \$88,000 and to authorize the Town Manager to sign the agreement including the two cited changes. Vote 7 – 0.*
- b. *Town Manager Resignation Acceptance – Councilor Hornbrook – Motion by Councilor Hornbrook, seconded by Councilor Shakespeare to accept the town manager's resignation as presented in the August 15th resignation letter.*

The Town Manager reiterated her reasons for leaving and took the opportunity to address the statements made via email by Bernie Philbrick that her resignation was a fraud and part of a plan with some Councilors to stay employed with the town and not hire a new manager. She denied the charges made by Mr. Philbrick and reiterated her desire for the town to make a smooth transition from one manager to the next.

Public Comment – James Kiser indicated that he felt that the Town Council should set a deadline of 12/31/2011 for the current town manager to complete her employment with the Town. He likened the need for the Council to expedite its work in selecting a new town manager to the deadline given to the Citizen’s Comp Plan Committee for completion of its work.

The vote on the motion to accept the resignation was 7 – 0.

The Town attorney recommended a second vote to accept the Manager’s offer to serve an extended notice to assist the Town until a new manager was named. Vote 7 – 0.

- c. *Billington LLC Subdivision Conservation Easement Acceptance – Planning & Development Committee Recommendation – Town Planner Robert Osborne explained that the Planning and Development Committee had met to discuss the proposed open space and conservation easement and that the Committee had recommended acceptance of the conservation easement but not possession of the open space land.*

Public comment- Jim Kiser, agent for Billington, LLC indicated that it was the desire of the developer for the Town to accept the open space land as well as the conservation easement so that it could be used by the public. Attorney Russell disagreed with this statement and provided language that conflicted with Mr. Kiser’s statement.

Motion by Councilor Brann, seconded by Councilor Cushing to accept the conservation easement as proposed but not ownership of the open space land itself. Vote 7 - 0

Mr. Kiser expressed concern that the motion was not sufficient to allow his client to prepare final plan documents for the proposed subdivision.

Motion by Councilor Cushing to rescind the prior motion, seconded by Councilor Brann, vote 7-0.

Motion by Councilor Cushing, seconded by Councilor Brann to postpone action on this item until the 11/21/2011 meeting to allow the Planning & Development Committee to consider the information. Vote 7-0.

A ten-minute break was taken at 8:50 p.m. Councilor Wright left the meeting at 9 p.m. due to illness. Motion by Councilor Brann, seconded by Councilor Cushing to excuse Councilor Wright for the remainder of the meeting. Vote 6 – 0.

- d. *Hampden Academy Re-use Update – Mayor Hughes explained the offer received from RSU 22 for sale of the old Hampden Academy site to the Town. Councilor Brann, Mayor Hughes, the Economic Development Director, the Town Planner and the Town Recreation Director met with RSU 22 and their consultant from WBRC regarding demolition costs and the market value of the property. Further information was requested on quantities/types/ costs of material to be disposed. The Economic Development Director is working with an appraisal firm to review the appraisal provided by RSU 22 and provide assessment of the property value including the buildings. The report is due back to the Town Council for the first meeting in December.*

Public Comment – Jeremy Williams – 1334 Carmel Road North – stated that consideration should be given to marketing the property including the existing buildings because they might have some value for a certain type of developer.

- e. *School/Town MOU for Trails – Services Committee Recommendation – Services Committee Chair Councilor Lawlis reported that the MOU remained as a work in progress between the Town and the School. Completion of it is not a requirement of the grant application being done by RSU 22.*
- f. *Concept Approval Letter for Trails – Services Committee Recommendation Concern was raised by Councilor Hornbrook over the discrepancy between the proposed Trail Use Agreement to be submitted with the grant that stated that snowmobiling would be an allowed use and the draft MOU between the school and the Town that excluded snowmobiles. After some discussion, it was the consensus of the council to include snowmobiling as an allowed use in the Trail Agreement and adjust the MOU as necessary prior to its completion.*

Public Comment – Rich Armstrong – Kennebec Road – Spoke in favor of including snowmobiling as an allowed use in the Trail Use Agreement.

Motion by Councilor Lawlis, seconded by Councilor Cushing to authorize the Town Manager to sign the Trail Use Permit after review by the Town Attorney. Vote 5 – 1 (Hornbrook)

Motion by Councilor Lawlis/seconded by Councilor Brann to authorize the Town Manager to sign the concept approval letter for the Trail project. Vote 6 – 0.

4. NEW BUSINESS

- a. Sewer Commitment – 7/1/2011 to 9/30/2011 – *Motion by Councilor Cushing, seconded by Councilor Lawlis to approve the Sewer Commitment for 7/1/2011 to 9/30/2011. Vote 6 – 0.*
- b. Draft Zoning Ordinance Text Amendment – Interchange District – Referral to Planning Board – Planning & Development Committee Information – *Motion by Councilor Brann, seconded by Councilor Cushing to send this item to the Planning Board for review. Vote 6 – 0.*
- c. Channel 7 Sound Quality – Mayor Hughes – *Mayor Hughes stated that on election day she heard from constituents that the sound quality on Cable Channel 7 was not good. She requested that the Communications Committee look at this issue. Councilor Brann indicated that he believed that the subject should be referred to the Infrastructure Committee since it was hardware related, and that other items such a bandwidth, internet capacity, etc should be discussed as well.. Councilor Hornbrook disagreed and indicated that it should be discussed by the Communications Committee, and that that Committee had already been discussing bandwidth and video streaming. No vote was taken. The subject will be discussed by the Communications Committee with necessary hardware components then reviewed by the Infrastructure Committee.*
- d. Questions regarding Fines & Fees in the Community – Mayor Hughes – *Mayor Hughes discussed concerns expressed by people on election day related to fines/penalties for cutting trees and asked that Staff provide a comprehensive list for the Council of fees/fines related to tree cutting.*

Public Comment – Alex King – 807 Kennebec Road – indicated that the Shoreland Zoning Ordinance required a licensed forester to do a cutting plan for trees cut in the shoreland zone and that perhaps that was what people were concerned about.

The Town Manager stated that persons had called the office after a local radio broadcast in which they reported hearing that people in Hampden could be fined \$500 or face jail time for cutting a tree on their own property. The Tree Ordinance contains fines/penalties for cutting trees on public property – not private property. Staff will compile a list for the Council to review.

- e. Discussion regarding Concerns Related to Disclosure of Information from Executive Sessions – Mayor Hughes – *Mayor Hughes asked Town Attorney Tom Russell to review the rules regarding executive sessions as to what can be discussed in executive session and what information in an executive session is protected and what is not. Following that explanation was public comments.*

Lisa Carter – Western Avenue – Expressed frustration and disgust at the length of time that residents had to wait for an opportunity to express their views on this agenda item. She indicated that citizens had endured a 3 hour wait as well as grandstanding, ridicule, snide remarks and haughtiness. She believes that this line item was meant to unfairly target Councilor Hornbrook regarding recent sessions, one of which was not even a legal executive session.

Councilor Hornbrook thanked Mrs. Carter for her comments and indicated that she was well aware of the Freedom of Information act and what was and was not allowed in regard to executive sessions.

Mayor Hughes will not be present for the next Council meeting on November 21st and there was a discussion regarding who would chair the meeting if the Deputy Mayor was also not available. Councilor Cushing will be present and act as chair but it was discussed that the Council needs to include in its rules who will preside if both the Mayor and the Deputy Mayor are not at a meeting..

- f. *Application for Liquor License received from Countrymeadow, Inc. d/b/a Pizza Gourmet at 60 Main Road North, Ste. A – Motion by Councilor Lawlis, seconded by Councilor Cushing to approve the liquor license for Countrymeadow, Inc. d/b/a Pizza Gourmet. Vote 6 – 0.*

D. COMMITTEE REPORTS

Infrastructure – Councilor Shakespeare read the minutes of the October 24th Infrastructure.

Services – Councilor Lawlis reported that the Services Committee had met prior to the Council meeting to discuss items related to the Trails project discussed as part of the Council agenda as well as a beginning review of the outdoor facilities ordinance.

Planning & Development – Councilor Brann reported that the Committee had worked on the Billington subdivision open space question, the lot 5 sale in the Business Park, a recreation plan being developed, progress on the Marina park project, an ordinance related to the waterfront district, and development of a sign ordinance.

Communications – Councilor Hornbrook reminded people that the next meeting of the Communications Committee will be on Tuesday, December 13th at 6 p.m.

Finance – No finance Committee meeting was held prior to the Council meeting due to the fact that the Services Committee was meeting.

- E. *MANAGER'S REPORT – A copy of the Manager's Report is attached.*

F. COUNCILORS' COMMENTS

Councilor Hornbrook – Thanked those who attended for coming to the meeting and those at home watching for taking the time to do so.

Councilor Lawlis – Stated that research she had done shows that 1 of every 20 people in Hampden is handicapped/disabled and the town needs to take that into consideration in the development of both infrastructure and ordinances.

Councilor Shakespeare – Stated that he took offense to remarks about the council made by Mrs. Carter during the discussion of the executive session item. He also stated that the Citizen’s Journal had printed erroneous information in regard to protection orders, stalking, etc. and that he wished to correct the record on those articles.

G. ADJOURNMENT

*Motion by Councilor Cushing, seconded by Councilor Lawlis to adjourn at 10:15 p.m.
Vote 6-0.*

Respectfully submitted,

*Susan Lessard
Town Manager*