

## **FINANCE & ADMINISTRATION COMMITTEE MEETING**

Monday, December 21, 2015

6:30 p.m.

Hampden Town Office

1. Meeting Minutes – December 7, 2015 Meeting
2. Review & Sign Warrants
3. Old Business
4. New Business
  - a. Gerry Ouellette, Personnel Appeals Board – Reappointment
  - b. Fire Station Lease to RSU 22 – Charges for Sewer Usage to Date
5. Public Comment
6. Committee Member Comments

## FINANCE & ADMINISTRATION COMMITTEE MEETING

Monday, December 7, 2015

### MINUTES - DRAFT

*Attending:*

*Mayor David Ryder*

*Councilor William Shakespeare*

*Councilor Stephen Wilde*

*Councilor Dennis Marble*

*Councilor Terry McAvoy*

*Councilor Greg Sirois*

*Town Manager Angus Jennings*

*Councilor-Elect Ivan McPike*

*Citizens*

*Mayor Ryder called the meeting to order at 6:00 p.m.*

1. **Meeting Minutes – November 16, 2015 Meeting** – *There was a motion and a second to approve the November 16, 2015 minutes as written. Unanimous vote in favor.*
2. **Review & Sign Warrants** – *Warrants were reviewed and signed by Committee members.*
3. **Old Business**
  - a. **Pine Tree Landfill Post Closure Monitoring – Proposal from Drumlin, LLC and SoilMetrics, LLC** – *Town Manager Jennings presented the proposal received to provide third-party peer review services relative to post-closure monitoring of the Pine Tree Landfill. These firms had been providing service to the town in past years but their last report on file was December 2013. The proposed scope is broken into three tasks: 1) reviewing Casella's reports and DEP reports on file since December 2013 to provide the Council with an updated baseline of information; 2) present their findings at a public meeting; and 3) support the town going forward, including through Casella's filing of their 5-year post-closure plan in April 2016. The initial task would cost \$3,000; the . There was discussion regarding how the work would be funded, and Manager Jennings advised that the Host Community Benefit account was established and funded in part to cover expenses associated with the landfill. Councilor Marble asked whether additional monies are still coming into that account, and Manager Jennings said that there aren't. Councilor Marble asked whether the balance in that account is known, and Manager Jennings advised that, because the post-audit adjustments from FY14 and FY15*

*have not yet been made, the specific balance is not known, although he estimated that the balance was around \$400,000. Manager Jennings reported that getting these post audit adjustments complete, which were received in the past few weeks from the Auditor, was a top priority of his office, and that work on this is underway. Councilor Sirois recommended that the Council move forward with this work so residents will be provided this service. Mayor Ryder suggested that, if this work is to be undertaken on an ongoing basis, it could be included in the FY17 budget, or it could be funded out of Host Community Benefits on an ongoing basis, and that this could be decided during the budget process. Councilor Marble supported moving forward with the work. Councilor Sirois motioned, seconded by Councilor Marble, to recommend that the Town Council approve moving forward with the first task then, on the basis of that work, to decide whether to move ahead with the other tasks. The motion was clarified to provide that the funds would come from the Host Community Benefits account. Unanimous (6-0) vote in favor.*

#### **4. New Business**

- a. **Transfer Station Swap Shop Building Replacement** – *Mayor Ryder summarized discussions from recent Infrastructure Committee meetings recommending that the swap shop be replaced with a pre-fab building in order to improve internal traffic circulation at the Transfer Station, and to improve visibility and monitoring of the swap shop by Transfer Station staff to minimize items left with no repurposing value. The cost of the building would be \$4,792 including delivery. Mayor Ryder asked whether the source of funding would be the funds saved from eliminating Saturday bus service. Manager Jennings did not recall the source of the funding that had been discussed, and apologized that he didn't remember this. Councilors McAvoy and Wilde recalled discussion of paying for this out of the excess Bus funding. Councilor Marble motioned to recommend to Council approval of the purchase of the shed based on the quote received from Ed's Sheds. Councilor Sirois seconded. Unanimous vote in favor.*
  
- b. **Approval of Expenditure of \$15,000 of Surplus Monies for Cruiser Replacement** – *Manager Jennings summarized his memo included in the meeting packet, which described that funds which had been budgeted in FY14 (\$15,000) and FY15 (\$17,000) for cruiser replacement had not been carried over from year to year. Funding*

*such as this should properly be budgeted in reserve funds, which carry forward from year to year automatically, and this is how such funds will be budgeted going forward. Because the FY15 audit is not yet final, the funds budgeted in FY15 were able to be carried forward. However, because the FY14 audit is closed, and because the new police cruiser which was purchased in September relied upon funding from FY14, it would be necessary for the Council to approve expenditure of the FY14 funds from so-called "surplus" funds. Councilor Sirois noted that this action would basically adjust for an accounting error, and Manager Jennings agreed. Councilor Sirois made a motion to recommend to Council to use \$15,000 in surplus monies from FY14 to make an adjustment to our accounting to accurately reflect how the police cruiser was purchased. Councilor Wilde seconded, and there was a unanimous vote in favor.*

- c. Discussion of Preliminary Findings – FY15 Audit – Manager Jennings handed out a report (attached to these minutes) summarizing research his office has been undertaking based on the preliminary findings of the FY15 audit, and his review of prior years' budgets and expenditures. He described that, as part of the audit, the auditor provides audit adjustments which must be incorporated into the town's accounting system in order for the FY15 audit to be closed out. Work on these audit adjustments is underway. Manager Jennings described that his work has identified a number of significant budgeting issues that will have bearing on FY17 budgeting and may affect FY16 spending. The first finding is that the sewer rates are inadequate to cover the operating and capital costs of the sewer, and that this has been the case for a number of years. In order for the Sewer Fund to make its payments, the General Fund has loaned funds. These loans show up in the audit as interfund transfers. Such interfund transfers are not uncommon in municipal finance, but the amount of the transfers, and the fact that there is a structural deficit – meaning that revenues each year are lower than costs – makes this an item of concern. Manager Jennings advised that the sewer rates will need to be revised to cover costs, and to provide for the Sewer Fund to refund its loans from the General Fund over a period of time. He is working with DPW Director Currier to evaluate options regarding revisions to sewer rates. Councilor Shakespeare asked when the last time sewer rates were increased, and Manager Jennings said it was in 2009. Meeting minutes reflect that when a sewer bond was approved in 2013 the then-Town**

*Manager advised that sewer rates would need to be adjusted, but that this was not done.*

*Manager Jennings moved on to the second point in the memo, which included an analysis of the town's current debt service obligations. This illustrates that the sewer revenues are not supporting all sewer-related debt service, and that the bond payments from the Business Park bonds issued in 2000 had not been included in the town budget in recent years and had been paid out of the Host Community Benefit account.*

*Manager Jennings moved on to the third point in the memo, which described outstanding payments due to the City of Bangor for sewer treatment costs. The total amounts due, totaling \$293,000, covered service dating back through most of FY15 and the second half of FY14. An additional invoice has since been received for the final four months of FY15, bringing the total amount due to almost \$400,000. One of the invoices has since been paid, in the amount of \$96,000, but there are inadequate funds in the sewer fund to pay these bills. Further interfund transfers are an option, but this will contribute to cash flow challenges facing the General Fund. The Tax Anticipation Note offers a \$2 million line of credit, which the town has not yet drawn from, but any such funds would need to be paid back by the end of June 2016 so this would only provide short-term assistance.*

*Manager Jennings reported that his review of the past few years of audits (through FY14) show that the town's total year-end fund balance has fallen steadily in recent years. During this time, the budget has included draw-downs that are put directly toward reducing property tax burden.*

*Manager Jennings reported that, because of two invoices received in the fourth quarter of FY15 totaling \$122,000 related to work approved in FY12 and FY14, the \$100,000 included in the current FY16 reserve budget for streets and roads would not be available for any future work because it is needed to bring that reserve budget line item back into balance. Manager Jennings reported that he has advised the DPW Director that no reserve funds would be available for streets and roads project in the current fiscal year. Approximately \$65,000 was recently received from Maine DOT through the Local Road Assistance*

*Program, so this will support some work, but the work program will be substantially less than has been the standard in recent years.*

*Manager Jennings concluded by saying that his budget message for FY17 would take into account these findings, including updates based on the FY15 audit once it is finalized in January, in order to set out a proposed budget that will meet current obligations, and support ongoing operations and future policy and capital objectives.*

*Councilor Wilde said that the Council had hired Manager Jennings and asked him for transparency, and that while he's not happy about the findings it is good to know what's going on so the Council can take this into account in its budgeting. Councilor Shakespeare agreed.*

*Councilor McAvoy asked what happened to the sewer income during the period of time when Bangor's invoices weren't being paid. Manager Jennings said that the town's accounting records account for every expenditure down to the penny, but that because not enough revenues were received to pay sewer costs – the actual sewer revenues are less than budgeted sewer revenues by approximately \$200,000 per year – there would not be expected to be extra funds even though budgeted costs were not paid. Councilor Sirois noted that sewer rates haven't increased since 2009. Manager Jennings noted that, to the best of his knowledge, the sewer budget has not been brought before the Council but that, going forward, the Council will be presented with a proposed sewer budget so information is available regarding costs and revenues. Councilor Marble said that the most important thing is to note that the Manager is getting a handle on this and that, going forward, the Council would review these numbers thoroughly. He agreed with Councilor Wilde that it will be a challenging budget year. Manager Jennings agreed, and noted that – while he'll have better information regarding FY15 year-end standing once the FY15 audit is complete – he felt it would be important to bring this to the Council's attention as soon as he had this information.*

*Councilor-elect McPike noted that the former Town Manager had reported that it was very difficult for her to receive timely invoices from Bangor regarding sewer charges. Manager Jennings agreed with this, noting that sewer invoices are sometimes received as many as nine months after the charges are incurred. He reported that, in 2007 or so, there had been a significant overcharge from Bangor to Hampden*

*which, at the time, had been resolved through involvement of an independent engineer who confirmed that the town had been overcharged. This had resulted in a six-figure settlement, at the time, whereby Hampden's sewer charges were discounted to account for the period of overcharging. Because of this history, Manager Jennings is aware that the former Town Manager closely scrutinized every Bangor sewer invoice, which takes time, and that when invoices were received so long after charges were incurred it made this review even more challenging. Manager Jennings reported that DPW Director Currier has been meeting with the Bangor sewer accounting staff in order to ensure his understanding of how the invoices were structured, so that we can continue to apply close scrutiny to ensure that these costs are appropriate.*

*Councilor McAvoy noted that annual audits are completed every year, but that they haven't provided information that can be relied upon to determine the financial health of the town. Manager Jennings advised that the delivery of the audit is accompanied by a memo with management recommendations. The auditor's job is to complete the audit and offer management recommendations, but it is the Manager's and the Council's job to implement the recommendations. Councilor Marble noted that we've reduced the fund balances by \$2.4 million over four years. He said we need to have accurate information in order to make good decisions for the whole town. Councilor Sirois said we need to make adjustments to pay back funds the sewer fund has borrowed. Manager Jennings agreed, and said that he and Director Currier are working hard to evaluate the sewer rate structure. He is sensitive to concerns of sewer customers regarding costs, and said that any proposed change would be evaluated internally every which way to ensure that, before it's brought forward for formal consideration, it has been closely scrutinized and is justified and defensible.*

**5. Public Comment – Alex King asked how much money remains in the Host Community Benefit account. Manager Jennings said that this amount won't be known accurately until the FY15 audit is complete.**

**6. Committee Member Comments – None.**

*There being no further business, the meeting was adjourned at 6:56 p.m.*

Respectfully submitted – Angus Jennings, Town Manager



Check One:  Initial Application  Reappointment Application

TOWN OF HAMPDEN  
APPLICATION FOR TOWN BOARDS AND COMMITTEES

NAME: Ouellette Cathy John  
LAST FIRST MI

ADDRESS: 477 Back Winterport Road Hampden ME 04444  
STREET TOWN ZIP

MAILING ADDRESS (if different): \_\_\_\_\_

TELEPHONE: 207-842-2894 207-848-5540  
HOME WORK

EMAIL: gouellette@mctire.com

OCCUPATION: Human Resources Safety Manager

BOARD OR COMMITTEE PREFERENCE:

FIRST CHOICE: Personnel Appeals Board

SECOND CHOICE (OPTIONAL): \_\_\_\_\_

How would your experience, education and/or occupation be a benefit to this board or committee? 28 years As a Senior Human Resources Safety Manager

I have been a board member for several years now. In hopes

to be able serve my town I live in when the time comes for resolution issues.

Are there any issues you feel this board or committee should address, or should continue to address? no

3 YEAR

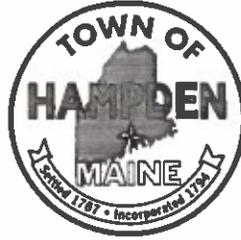
- CONSERVATION COMMITTEE
- BOARD OF ASSESSMENT REVIEW
- PERSONNEL APPEALS BOARD
- LURA HOIT MEMORIAL POOL
- ECONOMIC DEVELOPMENT COMMITTEE
- FRIENDS OF DOROTHEA DIX PARK

- EDYTHE DYER LIBRARY
- RECREATION COMMITTEE
- BOARD OF APPEALS
- HISTORIC PRESERVATION COMMITTEE
- TREE BOARD

5 YEAR  
PLANNING BOARD

|                                   |  |   |
|-----------------------------------|--|---|
| <b>FOR TOWN USE ONLY</b>          |  | Date Application Received: <u>DEC 01 2015</u> |
| COUNCIL COMMITTEE ACTION: _____   | DATE: _____                            |   |
| COUNCIL ACTION: _____             | DATE: _____                            |   |
| <input type="checkbox"/> NEW APPT | <input type="checkbox"/> REAPPOINTMENT | DATE APPOINTMENT EXPIRES: _____               |

Town of Hampden  
106 Western Avenue  
Hampden, Maine 04444



Phone: (207) 862-3034  
Fax: (207) 862-5067  
Email: [townmanager@hampdenmaine.gov](mailto:townmanager@hampdenmaine.gov)

TO: Town Council Finance Committee  
FROM: Angus Jennings, Town Manager  
DATE: December 17, 2015  
RE: Sewer back charges for former Fire Station

As you may know, RSU-22 has leased the former Fire Station at 10 Main Road South from the Town since 2003. The initial 5-year lease continued until 2008, and a new lease was executed in December 2014, but occupancy by RSU-22 continued throughout this period. The lease provides that the tenant is responsible for payment of all utilities.

During our ongoing review of sewer operations, we discovered that 10 Main Road South is not listed as a sewer customer, and has therefore never been invoiced. (We are presently mapping all sewer customers by address to cross-reference with our sewer service area to ensure that there aren't other properties that may have been overlooked.)

I checked with the Town Attorney to advise us regarding whether these prior charges can be collected at this time, as well as whether the lapse in effective lease dates affect ability to recoup charges from 2003-08. Attorney Bearor's opinion, attached, is that the prior sewer charges are subject to collection.

Our sewer invoicing is based on records of water usage maintained by the Hampden Water District. The Water District did not create an account for this location until 4/1/05, with the first invoice sent 4/1/06. Our review of these records following the same procedure applied to other sewer billing (including applying then-effective rates) results in the following calculation of charges due:

| Basis of Charge              | Applicable Rate   | Sub-Total         |
|------------------------------|-------------------|-------------------|
| 7,600 CF                     | \$3.28 per 100 CF | \$249.28          |
| 12,100 CF                    | \$4.28 per 100 CF | \$517.88          |
| Capital charges, 51 quarters | \$18.12           | \$924.12          |
| <b>Total Charges</b>         |                   | <b>\$1,691.12</b> |

We plan to send an invoice for these charges. No action by the Council is required. However I wanted to bring this to your attention.



Denise Hodsdon <clerk@hampdenmaine.gov>

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**FW: Request for opinion Old Fire Station Lease to RSU 22**

1 message

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**Edmond J. Bearor** <ebearor@rudmanwinchell.com>

Wed, Dec 16, 2015 at 3:22 PM

To: Denise Hodsdon <clerk@hampdenmaine.gov>

Cc: Angus Jennings <townmanager@hampdenmaine.gov>, "Lynn E. Brochu" <lbrochu@rudmanwinchell.com>

Denise, copy for your Council Packet. I will send along comments on the zone change as soon as I can.

**Edmond J. Bearor, Esq.**

The Graham Building | 84 Harlow Street

P.O. Box 1401 | Bangor, Maine 04402

tel: 207.947.4501 | fax: 207.941.9715

direct dial: 207.992.2626

ebearor@rudmanwinchell.com

**RUDMAN • WINCHELL**

COUNSELORS AT LAW

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**From:** Edmond J. Bearor

**Sent:** Wednesday, December 16, 2015 2:49 PM

**To:** 'Angus Jennings'

**Cc:** Lynn E. Brochu

**Subject:** Request for opinion Old Fire Station Lease to RSU 22

**Edmond J. Bearor, Esq.**

The Graham Building | 84 Harlow Street

P.O. Box 1401 | Bangor, Maine 04402

tel: 207.947.4501 | fax: 207.941.9715

direct dial: 207.992.2626

[ebearor@rudmanwinchell.com](mailto:ebearor@rudmanwinchell.com)

## **RUDMAN • WINCHELL**

COUNSELORS AT LAW

Angus:

Here are my preliminary thoughts - I address the questions posed by in reverse order:

1. The fact that there was no written lease in effect between 2008 and 2014 would not affect the ability to recoup charges. Both leases contain hold over language deeming the tenancy to be a tenancy at will, subject to all the terms and conditions of the lease except for duration. Both leases also state that tenant shall pay "all charges for electricity, water, sewer, and all other public or private utility services to or for the benefit of the premises during the term."

Since the property was not set up in the Town's billing system, it could be argued that there were never any "charges" to be paid under the lease. However, I think retroactive charges would be included under the lease language since the RSU did benefit from use of the sewer system.

2. Under 30-A MRS s. 3406, a municipality can establish a schedule of service charges for property connected with a municipal sewer system for the use of the system. The municipality can collect the charges in the same way that sewer districts can under 38 MRS s. 1208 which includes filing a civil action, after demand, for any rate, toll, rent or other charge remaining unpaid.

If the RSU has been using and benefitting from the sewer system since 2003, it follows that they should be charged for that use and benefit according to the schedule of service charges. There was no specific look-back period for unbilled services so there does not appear to be a limit to years we can try to recover. If the RSU balks and will not pay, in order to pursue a remedy, we would need to argue that the charges became due when the billing error was discovered, not when the services were actually provided and normal bills would have been sent out. If the latter is the case, then we might be limited in what we can collect by the 6 year SOL for civil actions. The lien process obviously does not make sense since the Town is the owner already.

To recap, the Town could 1) sue in its proprietary capacity under the lease for unpaid charges or 2) under MRSA sec 3406 in its governmental capacity against the occupant (RSU 22) of the property.

I am happy to follow up or discuss further.

Ed

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**From:** Angus Jennings [mailto:townmanager@hampdenmaine.gov]  
**Sent:** Wednesday, December 09, 2015 12:46 PM  
**To:** Edmond J. Bearor  
**Cc:** Sean Currier  
**Subject:** Request for opinion

Billing Category: Administration

Ed,

The Town has been leasing the former fire station to RSU 22 since 2003, since shortly after the Fire Department moved to its current location in the municipal building. I have attached the lease that was in effect from 2003-08, and the second lease executed December 2014 for a 10-year term. There was no lease in effect from 2008-14, although RSU 22 occupancy continued.

The lease provides that the tenant is responsible for payment of all utilities. However, I've just learned that our Sewer fund does not include this property in its system, and has never invoiced for sewer to that location.

My questions are as follows:

- How far back can we reach in recouping prior sewer payments? All the way to 2003?
- Does the lapse in effective lease dates affect ability to recoup charges from 2003-08?

We're currently reviewing other leases to which the town is a party (to the Kiwanis Club, Goodwill Riders Snowmobile Club, etc) to determine whether other such instance exist. We're also presently mapping all sewer customers by address and will cross-reference this with our sewer service area to ensure there aren't other properties that may have been overlooked.

Initially, a verbal opinion will suffice. Depending on your opinion, I may then ask you to provide it in writing.

There is no hard deadline for this work, but it would be helpful if you would estimate when I might expect to hear from you with a verbal opinion.

Thanks,

Angus

—

Angus Jennings  
*Town Manager*

*Town of Hampden*

*106 Western Avenue  
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townmanager@hampdenmaine.gov*

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