

Town of Hampden

SERVICES COMMITTEE MEETING

Tuesday, October 9, 2018

6:00 P.M.

HAMPDEN TOWN OFFICE

AGENDA

1. Approval of Minutes
 - a. September 10, 2018 Meeting
2. Committee Applications & Citizen Initiatives
3. Unfinished Business
4. New Business
 - a. Authorize Letter to Spectrum in support of CTAM regarding non-compliance of franchise agreement terms – *for Action at the request of staff, Kyle Severance*
 - b. Maintenance Concerns at Skehan Center – *for Discussion at the request of staff, Jim Chandler and Shelley Abbott*
 - c. Western Avenue Municipal Properties Stormwater Permitting – *for Action at the request of staff, Jim Chandler and Shelley Abbott*
5. Staff Updates & Manager Items
 - a. MRC/Fiberight – *Staff Discussion*
 - b. Discussion of ongoing activities related to the Vafiades Landing – *at the request of Chris Packard*
6. Public Comments
7. Committee Member Comments
8. Adjourn

Town of Hampden

SERVICES COMMITTEE MEETING

Monday, September 10, 2018

6:00 pm

HAMPDEN TOWN OFFICE

MINUTES – DRAFT

Attending:

*Chairman Marble
Councilor McAvoy
Councilor Ryder
Mayor McPike
Councilor Wilde
Councilor Wright*

*Town Manager Jim Chandler
Eric Jarvi
Chris Packard*

1. Minutes

- a. **August 13, 2018** – *Mayor McPike made a motion, seconded by Councilor McAvoy to accept. Unanimous vote in favor, 6-0.*

2. Committee Applications & Citizen Initiatives – None

3. Unfinished Business

- a. **Marina – Harbor Master Ordinance Changes**

Chairman Marble introduced the item stating that the only question had been from Councilor McAvoy on the Harbor Master's authority. Town Manager Jim Chandler stated he had heard back from the Attorney at Maine Municipal this afternoon that resulted in one additional edit/change that was made on page 2. Councilor Wright made a motion to refer to Town Council for Public Hearing, this was seconded by Councilor McAvoy. The vote was unanimous.

4. New Business

- a. **Casella's Notification of New Costs for Hauling Town Recycling – Requested by staff and Chairman Marble**

Councilors held discussion on this item.
Nothing was decided.

5. Manager and Staff Comments

Town of Hampden

a. Youth Recreational Field Parking & Stormwater Permitting

Town Manager Chandler put out an RFQ. He also had a list of all attendees interested in the proposal.

b. Souadabscook Stream Boat Launch at Vafiades Landing

Chris Packard spoke about the Land Mark Heritage Trust as a possible funding source if the Town would agree to be the owner if the funds were raised to purchase the Landing. The Town could provide the maintenance of the Landing. The Committee suggested the Town Manager and Chris may want to sit down and have a discussion on what responsibilities the Town would play in the ownership and maintenance of the Landing if it were purchased by the Land Trust.

c. Transit Study & Bus Budget changes

Town Manager Chandler stated the colored chart is of the monthly numbers of ridership over the last 6 fiscal years. It shows a decline in ridership over the last 3 years. Councilor Ryder explained that it does not depict the actual riders from Hampden. The Hampden route starts in Bangor, both Bangor and Hampden riders are counted in those numbers. The Town is interested in more and better information on ridership for Hampden.

d. BACTS Pedestrian – Bicycle Planning Study

Town Manager reported BACTS is in the process of putting together a study and map.

6. Public Comments

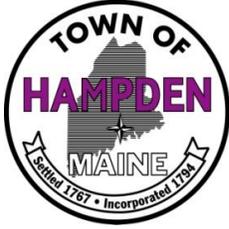
Eric Jarvi comment on walking 1A and the difficulties.

7. Committee Member Comments

8. Adjourn

With no further business, the meeting adjourned at 7:00 p.m.

*Respectfully submitted,
Rosemary Bezanson, Administrative Assistant*



MEMORANDUM

106 Western Avenue
Hampden, Maine 04444
Office: 207-862-3034
Facsimile: 207-862-5067

TO: Services Committee
FROM: Kyle Severance, IT/GIS Specialist & Jim Chandler, Town Manager
DATE: October 9, 2018
RE: Charter Communications – Cable Franchise Concerns

This memorandum and the attached items submitted from the Community Television Association of Maine, is intended to guide a discussion of issues related to the Town's current cable franchise agreement with Spectrum/Charter Communications.

Background

The Town currently has an exclusive agreement with the Spectrum/Charter Communications for the provision of cable television and other data communication services to Town residents, corporate citizens and municipal and educational customers.

The Town, like many other Maine communities, has experienced repeated challenges in its relationship with Spectrum/Charter regarding the reliability of services promised, and lack of timely response to complaints of customers.

Recommendation to Support CTAM Letter to State Legislature

Staff is recommending the Town engage with CTAM, and the more than twenty other Maine Cities and Towns, voicing complaints against Spectrum/Charter's non-compliance of franchise agreement terms. Specifically, CTAM is requesting: (emphasis by Town Manager)

"... **if you would be willing to send a letter** or a representative from your municipality with us to Augusta to meet with the Attorney General or participate in person or via conference call... **[OR] let us know if you don't wish to pursue these complaints** so that we may have a current barometer of their importance to your community."

Town staff works with Charter/Spectrum as a business customer. This includes managing the Town's public access cable channel and participating in the Penobscot Cable Consortium. Through these experiences, we observe many of the non-compliance issues represented in the report and support the proposed legislative action as a possible remedy. Both the non-compliance report and draft legislation are attached for review.

Legal Issues

The proposed letter will be sent to the Town's State Legislative Delegation; otherwise, no legal issues.

Fiscal Impacts

There is no expected fiscal impact, aside from staff time to coordinate the letter and a CTAM meeting.

CTAM Task Force Report

September 19, 2018

Charter Communications - Outstanding non-compliance issues

Report to the Maine Office of the Attorney General and the Office of the Public Advocate

1. Late or no posting of franchise renewals on their web page in violation of State Statute.

<https://www.timewarnercable.com/en/our-company/legal/regulatory-notices/pln/northeast/franchise-agreements.html>

This places them in violation of Section 8 of

<http://www.mainelegislature.org/legis/statutes/30-A/title30-Asec3010.html>

This complaint was filed with the Office of the Attorney General on November 22, 2017.

Status: There is no Federal law or FCC Ruling that either mandates or prohibits this requirement, this statute (above) is unique to Maine and compliance by Charter is sporadic. Other cable operators in Maine, except Bee Line, are in compliance. We are asking the Office of the Attorney General for a ruling on this.

2. Franchise renewal delays.

Multiple towns report a purposeful delay in reviewing franchise renewal applications that use the Maine Model Franchise with its many consumer protections and municipal benefits. This is in stark contrast to the "fast lane" approval of franchises written by Charter attorneys. A change in the State Statute is required when the "review" of the proposed Maine Model franchises used by municipalities stretches out over many months, costing towns time and money.

Status: There is a Federal Statute that specifies that "The franchising authority may establish a date by which such proposal shall be submitted." but most municipalities are not aware of this.

<https://codes.findlaw.com/us/title-47-telecommunications/47-usc-sect-546.html>

This item will be addressed with successful passage of the PEG Non-Discrimination Bill.

3. Credits and refunds notification violation.

30-A M.R.S. § 3010 paragraph "2-A. Notice on subscriber bills; credits and refunds. Every franchisee shall include on each subscriber bill for service a notice regarding the subscriber's right to a pro rata credit or rebate for interruption of service upon request in accordance with subsection 1. The notice must include a toll-free telephone number and a telephone number accessible by a teletypewriter device or TTY for contacting the franchisee to request the pro rata credit or rebate for service interruption. The notice must be in nontechnical language, understandable by the general public and printed in a prominent location on the bill in boldface type."

Status: There is no such notice on the subscriber's bill, only a short sentence in small print that says "Terms and Conditions - Spectrum's detailed standard terms and conditions for service are located at spectrum.com/policies"

If you follow that link and are able to find "Spectrum Residential Terms and Conditions" (one of 35 links on that page) you will come to a page with 8 more

links. If you find the right one, "Spectrum Residential General Terms and Conditions of Service and scroll down to number 9, you will see this paragraph in fine print:

"9. Disruption of Service: All Services are provided on an "AS IS" and "AS AVAILABLE" basis. In no event shall Spectrum be liable for any failure or interruption of Service, including without limitation those failures and interruptions resulting in part or entirely from circumstances beyond Spectrum's reasonable control. Subject to applicable law, Spectrum may give credit with respect to Subscriber's recurring monthly subscription fee for qualifying outages of Services."

This does not meet the requirements of 30-A M.R.S. § 3010 paragraph 2A and therefore they are also in violation of this provision of Title 30A.

Status: There is no Federal Statute for credits and refunds, the FCC Customer Service Standards also do not address this issue,

see: <https://www.fcc.gov/media/customer-service-standards>

Federal Law does however provide that "Nothing in this subchapter shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section."

<https://codes.findlaw.com/us/title-47-telecommunications/47-usc-sect-552.html>

This is a Consumer Protection requirement of State law 30-A M.R.S. § 3010 paragraph 2A and Charter is not in compliance. We are asking the Office of the Attorney General for a ruling on this.

4. Failure to provide quality of service notification.

Section 2B of <http://www.mainelegislature.org/legis/statutes/30-A/title30-Asec3010.html> states:

"On or before January 30th of each year, the franchisee shall certify to the franchising authority and to the Department of the Attorney General that it has distributed the notice during the previous calendar year as required by this section".

Status: None of the towns questioned have received such notices, nor has the Office of the Attorney General.

This is a filing notice requirement of State law and Charter is not in compliance. We are asking the Office of the Attorney General for a ruling on this.

5. Failure to provide annual reports to the towns as required by Town franchises and failure to report the basis for franchise fee payments showing number of subscribers and other information as required by the Town Franchise agreement. Charter claims this is now proprietary information.

Status: This is a franchise violation for the Towns that have this requirement and should be addressed by the Town Attorney. It is noted here for your information.

6. Failure to provide system maps.

Charter now maintains that all documentation regarding their cable system is proprietary and therefore any maps or diagrams are no longer available to the Towns which is in conflict with many franchises that are still in effect which grant the Towns access to this information.

Status: This is a franchise violation for the Towns that have this requirement and should be addressed by the Town Attorney. It will be addressed by the new legislation and is noted here for your information.

7. Refusal to replace worn out PEG equipment.

At least one City has the following franchise requirement: "Franchisee agrees to replace, with comparable but new equipment, equipment that is not reasonably usable due to normal wear and tear."

Status: This is a franchise violation for the Towns that have this requirement and should be addressed by the Town Attorney. It is noted here for your information.

8. Failure to notify Towns of franchise expiration in a timely manner:

15 year Charter franchises with automatic extensions state there will be an automatic extension "unless the town notifies the cable operator 36 months in advance". Charter's practice is to send the required 636 notification letter out to the towns 33 month in advance, so even if they wanted to "opt out" it would be too late by then. This is a questionable business practice that relies on an ignorance of the law or loss of institutional memory by the Towns.

Status: This item will be addressed with successful passage of the PEG Non-Discrimination Bill. This is a questionable business practice and is noted here for your information.

9. No provisions for PEG facilities in new franchises:

Paragraph 5 of 30-A M.R.S. § 3010 states that "All franchises must include provision for access to, and facilities to make use of, one or more local public, educational and governmental access channels subject to the definitions and requirements of the Cable Communications Policy Act of 1984, Public Law 98-549 or related requirements or regulations of the Federal Communications Commission."

Status: Several recent Maine franchises provided by Charter do not contain any mention of this requirement. It may be that the Town does not need a PEG channel at the time the franchise was signed, but it should not preclude the town from requiring a municipal channel (or sharing one with adjacent towns) several years later. Selectmen change and sometime in the future, they may want to televise their municipal meetings and that is why this language is in our State Statute and franchises as permitted under the Telecommunications Act.

This is a violation of State law and Charter is not in compliance. We are asking the Office of the Attorney General for a ruling on this.

10. Failure to provide a line extension policy as required per 30-A M.R.S. § 3008 paragraph 5(B).

<http://www.mainelegislature.org/legis/statutes/30-A/title30-Asec3008.html>

Six recent Charter franchises do not contain a line extension policy stating the minimum number of homes per mile.

Status: This is a violation of State law and Charter is not in compliance. This item will be addressed with successful passage of the PEG Non-Discrimination Bill. In the interim, we are asking the Office of the Attorney General for a ruling on this.

11. Charter is acting in a discriminatory manner regarding signal quality.

Charter has a stated policy of not accepting current technology High Definition signals from PEG stations, however they do accept HD signals from every other station.

Status: This item will be addressed with successful passage of the PEG Non-Discrimination Bill.

12. Charter is acting in a discriminatory manner regarding PEG stations.

Charter is moving only PEG stations to a seldom viewed portion of their channel spectrum. (See explanation below) Charter's behavior in this regard is also a handicap for the elderly and those less able to manipulate a remote control. This may also be in violation of 47 U.S. Code § 545 - Modification of franchise obligations: (e) REQUIREMENTS FOR SERVICES RELATING TO PUBLIC, EDUCATIONAL, OR GOVERNMENTAL ACCESS - A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access.

The State of Hawaii recently stopped this practice by Charter:

<http://olelo.org/nochannelslam/> Precedent is therefore set for a State Consumer Protection Agency to stop this "business decision" by Charter Corporation. Successful legislation in CA and Illinois has also prevented it there.

Status: This item will be addressed with successful passage of the PEG Non-Discrimination Bill but is included here for your information.

13. Charter franchises do not make reference to any procedures for investigating or resolving subscriber complaints as required by law.

<http://www.mainelegislature.org/legis/statutes/30-A/title30-Asec3010.html> paragraph 2A (1-4) In some Charter franchises, there is a sentence that states they are in compliance with all State and Federal laws but it does not describe any procedures as required by law.

Status: This is a violation of State law and Charter is not in compliance. We are asking the Office of the Attorney General for a ruling on this.

14. Charter is not offering a senior citizen discount although Time Warner did so under the Franchises that Charter purchased.

Status: Dropping this benefit without subscriber notification is a poor business practice and is noted here for your information.

15. Charter has discontinued the “whole house DVR” feature that Time Warner carried. If subscribers were paying extra for this service, there has not been a corresponding reduction in price.

Status: Dropping this benefit without subscriber notification is a poor business practice and is noted here for your information.

16. At least one Town Franchise requires universal service. Charter refuses to comply.

Status: This is a possible franchise violation of the Town franchise and should be addressed by the Town Attorney. It is noted here for your information.

17. Hidden Opt-out privacy notices.

Municipal Ordinances and Franchises that contain privacy notice requirements such as the right to prevent the cable operator from collecting and selling personal information and provide annual notice to each subscriber of the right to view or withdraw such authorization are typically ignored and such notices are always buried in their legal documentation so that subscribers do not know they have these rights.

Status: This is a questionable business practice and should be investigated by the Office of the Attorney General.

Summary:

We have no illusions that these Statute violations and franchise compliance issues with Charter are basically hidden from the public eye, but we are convinced that the facts we are presenting are only the tip of the iceberg and we will eventually have to take Statewide action against their business practices as has been done in other States.

<https://www.nytimes.com/2018/07/27/nyregion/new-york-spectrum-charter-cable-broadband.html>

<https://buffalonews.com/2018/09/27/buffalo-lawmakers-will-vent-to-state-about-spectrum/>
and

<https://www.berkshireeagle.com/stories/pattern-of-neglect-in-letter-north-adams-says-charter-should-pay-city-500000,551586>

http://www.lockportjournal.com/news/local_news/state-pursuing-legal-action-against-charter-communications/article_fdb1c5e6-865a-594b-8c34-be7f871c26d4.html

<http://wamc.org/post/spectrum-cable-changes-berkshire-county-prompt-federal-response>

<http://www.miamiherald.com/news/nation-world/national/article147715819.html>

-T. Vigue for the Community Television Association of Maine
(207) 642-5055 (h) (207) 329-6243 (m)

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Ensure Non-Discriminatory Treatment of Public, Educational and Governmental Access Channels by the Cable Operator

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §3008, Paragraph 5 is hereby amended as follows: The State specifically authorizes municipal officers pursuant to ordinances to contract on such terms and conditions and impose such fees as are in the best interests of the municipality, including the grant of ~~exclusive or~~ nonexclusive franchises for a period not to exceed 15 years, etc.

Sec. 2. 30-A MRSA §3008, Paragraph 5(B) is hereby amended as follows: A line extension policy, which must specify a minimum density of no more than 15 residences per linear strand mile of aerial cable for areas in which the franchisee will make cable service available to every residence meeting the minimum density;

Sec. 3. 30-A MRSA §3008, Paragraph 5(C) is hereby amended as follows: A provision for renewal, the term of which may not exceed 15 years, with no provisions for automatic renewal or other provisions for extending the initial term.

Sec. 4. 30-A MRSA §3008, Paragraph 5 is amended to insert Paragraph F as follows: A provision for the use and support of PEG channels, such channels shall be carried in the same manner and numerical location sequence as the local broadcast channels originating from the State of Maine, and carried on the cable system.

Sec. 5. 30-A MRSA §3008, Paragraph 7 is amended as follows: Model franchise agreement. The Department of Administrative and Financial Services, Office of Information Technology, or any subsequent designated department referred to in this subsection as "the office," ~~shall develop a~~ may update and amend the model franchise agreement for use by any municipality and any cable system operator that mutually choose to adopt the model franchise agreement or any of its provisions. The cable operator shall not further modify or amend this model without the consent of the municipality. The office shall make the model franchise agreement available on its publicly accessible website. In the development of the model franchise agreement, the office shall, at a minimum, consider the following issues:

Sec. 6. 30-A MRSA §3010 is hereby amended to insert Paragraph 5A after Paragraph 5 as follows:

"For the purposes of this section, a cable television operator shall include multichannel video programming distributors as defined by federal law in 47 USC section 522(7) and the "local unit of government or the entity to which the local unit of government has assigned responsibility for managing PEG access channels" shall hereinafter be designated as the "PEG Originator".

Public, Educational, and Governmental channels hereinafter referred to as "PEG" channels shall be carried on the cable operators' basic cable or video service offerings or tiers. To ensure continuity of service to the subscriber, the PEG channels shall not be separated numerically from other local broadcast channels carried on the cable operators' basic cable or video service offerings or tiers and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator, unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the PEG Originator, unless the change is required by federal law. This law shall be retroactive such that any PEG channels that have been moved within the past 24 months and without the consent of the PEG Originator will be restored within 60 days to their original location and number."

Sec. 7. 30-A MRSA §3010 is further amended to insert Paragraph 5B after paragraph 5A as follows:

"PEG signals shall be retransmitted in the same standard (format) as received from the PEG Originator, and afforded the same signal quality provided to all subscribers on the cable system in comparison to local broadcast channels. That is, if a high definition or current technology signal is sent to the cable operator by the PEG Originator, the cable operator shall not diminish, down convert or otherwise tamper with the signal quality or format provided to them. Said channel signals as delivered to the subscriber shall be of equivalent quality and format to local broadcast channel signals carried on the system if provided as such by the PEG Originator. All cable television operators shall simultaneously carry each PEG access channel in both a high definition format and a standard digital format in the same manner as the local broadcast channels are provided, unless prohibited by federal law."

"Further, all cable television operators, when requested, shall not prohibit and shall assist in providing the PEG Originator with access to the entity that controls the Electronic Program Guide (EPG) so that subscribers may view, select and record PEG access channels in the same manner as local broadcast channels. In addition, PEG channels on the EPG will be identified in the same manner as local broadcast channels. This provision does not obligate cable operators to list PEG programming content on said channel cards and channel listings. If Channels are selected by a viewer through a menu system, the cable operator shall display the Town's PEG Access Channels designation in a similar manner as local broadcast channels."

Sec. 8. 30-A MRSA §3010 is further amended to insert Paragraph 5C after paragraph 5B as

follows:

“Franchise Renewals:

1. **The Franchise renewal process shall be conducted in compliance with 47 U.S.C. § 546.**
2. **Cable Operators shall maintain adequate personnel and resources to respond to municipal requests for renewal information in a timely manner. Failure to respond within 60 days shall be considered a violation of Title 5, Chapter 10, The Maine Unfair Trade Practices Act.**
3. **In the event of automatic renewal provisions in current franchises, the cable operator shall notify the Franchising Authority of such automatic renewal no later than 36 months in advance of the expiration of the franchise.**
4. **Maps, diagrams, annual reports and franchise fee statements may be required by the municipality at renewal and shall be made available upon reasonable notice. If said information is proprietary, a non-disclosure agreement may be executed with the municipality.**

SUMMARY

This bill first corrects §3008, the Ordinance Chapter 141 of Title 30-A Paragraph 5 to bring it into compliance with 47 U.S.C. §541 (1) (a) which states that “ a franchising authority may not grant an exclusive franchise”.

Second, this bill amends §3008, the Ordinance Chapter 141 of Title 30-A to require all new cable franchises to provide line extensions with a minimum homes per mile requirement not to exceed 15 HPM. This will have the effect of extending service to far more rural areas than can be accomplished in any other manner.

Third, this bill prevents “automatic franchise renewals” beyond the initial term of the franchise renewal period. Existing franchises with automatic renewals will be grandfathered but will now require a 36 month advance notification of expiration from the cable operator to the municipality.

Fourth, this bill includes a provision for “use and support” of PEG channels and requires that they be placed in the same numerical sequence location as the local commercial network broadcast channels.

Fifth, this bill updates the Maine Model Franchise paragraph and prevents the cable operator from amending this model without the consent of the municipality as arrived at during negotiations.

Sixth, this bill amends §3010, the Ordinance Chapter 141 of Title 30-A regarding Consumer Rights and Protection as follows:

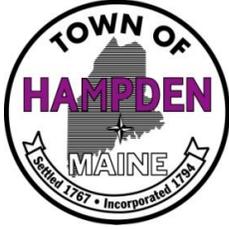
This bill requires all cable operators in Maine to carry Public, Educational and Governmental (PEG) channels on the basic cable or video service offerings or tiers and such channels shall not be separated or moved numerically from other channels carried on the basic cable or video service offerings or tiers without the agreement of the local unit of government or the entity to which the local unit of government has assigned responsibility for managing PEG access channels (the PEG Originator), unless the change is required by federal law. In the event of transfer of the franchise license, the same channel numbers used by the incumbent cable operator shall be retained. This law shall be retroactive such that any PEG channels that have been moved in the past 24 months without the consent of the PEG Originator will be restored to their original location and number.

Secondly, this bill requires all cable operators in Maine to work with the PEG Originator to insure that the signal sent from the point of origination to the cable operator and delivered to the cable subscriber is of the same quality and format as originally created, without exception.

Third, this bill requires all cable operators to provide PEG operators access to the entity that controls the electronic programming guides in the same manner as the local broadcast channels if requested by the PEG Originator. Also, PEG channel designations will be displayed in a similar manner as other channels on the program guide.

Fourth, this bill requires all cable operators to comply with Franchise Renewal procedures in a timely manner without “automatic extensions”. Further, the cable operator cannot refuse to provide the municipality with requested information to complete the renewal process.

DRAFT



MEMORANDUM

106 Western Avenue
Hampden, Maine 04444
Office: 207-862-3034
Facsimile: 207-862-5067

TO: Town Council
FROM: Shelley Abbott, Recreation Director & Jim Chandler, Town Manager
DATE: October 9, 2018
RE: Skehan Center Operation & Maintenance Concerns

This memorandum and list of issues below are submitted from the Recreation Director, in consultation with the Town Manager. It is intended to guide a discussion of issues related to the Town's current challenges associated with the operations of recreation programming at the Skehan Center.

Background

The former Hampden Academy school buildings and campus was showing its age in 2013 when the Town sold it to the Lafayette Hotel company for \$60,000. At that time the building was empty, and it appeared the RSU had not invested in major maintenance or improvements to the property as it prepared to move to its new campus. It was common knowledge the property needed major renovations and repairs to make it useful and safe for continued occupancy. These concerns, coupled with the significant investment required for environmental remediation of several buildings, motivated the Town to sell the property at the reduced price.

The Town entered into a long-term Lease Agreement with the new owner of the Historical Hampden Academy (HHA LLC) on 6 September 2013; and recently moved from the five-year initial fixed period to a year-to-year lease that automatically renews annually. The terms of the lease allow the Town's continued use of certain areas associated with the gymnasium for one (\$1.00) dollar per year where the Town Recreation Department provides year-round cultural, recreational and community programs serving populations of all ages, including both youth and adult sports, and senior programs.

The current lease also requires the Town pay for all maintenance and repairs to the building and physical plant components for the leased areas; and percentages towards maintenance of the grounds, parking lot and certain common areas shared with other tenants. For improvements made to the entire campus, the use for determining the "share" of total costs due HHA LLC from the Town is based upon square footage (22%) of the total property. However, the Town assumed responsibility for plowing and removal of snow for the entire property and continues to pay 100% of the costs associated with contracting for this service.

Recent Activities & Summary of Concerns

As you were made aware in May, HHA LLC moved forward with repaving the previously paved parking areas and driveways. The Town's share of this expense was not budgeted, and terms were reached that allow for interest-free payments to address \$14,000 charged to the Town. The attached list of concerns provides additional details regarding both ongoing and recent concerns raised by Recreation Department staff; and, are the result of recent meetings and inspections on-site that included the Recreation Director, Town Manager, Public Works Director and Code Enforcement Officer.

The following issues, complemented by a few examples, impact the ability of Recreation Department staff to provide high levels of service to Hampden residents, corporate citizens and visitors at the Skehan Center. These challenges wear on staff morale as they work tirelessly to provide programs despite the lack of basic amenities like hot water, reliable internet and phones. This memorandum is not meant to disparage the relationship between the Town and HHA LLC, but rather to articulate concerns that have been previously raised, and new concerns that have come about because of the significant increase in additional tenants – as the remaining empty spaces have been successfully filled by the owner.

The list includes health and safety concerns that need immediate or relatively quick attention and/or represent concerns that need consideration for the upcoming budget cycle. They are grouped by category, not necessarily in order of priority.

Operational Issues

Basic operations and programming are challenged by a number of basic issues. These issues have been exacerbated by a deteriorating relationship with the owner and on-site property management staff. Lack of respect shown toward Town staff, and the terms of the lease are constantly referred to as though the town is receiving ‘undeserved charity’ because the Town only pays \$1.00 per year. As will be made apparent in the operational and maintenance concerns and related costs, this amount significantly under represents the actual costs to the Town and its taxpayers.

- A. Building Security
 - i) Director does not have a secured office area
 - ii) No security for equipment, computers or records
 - iii) Limited space for private meetings, calls or conversations with customers
 - iv) Gym side entrances not secured and allow access to other tenants when left open
- B. Information Technology and Communications equipment doesn’t function adequately
 - i) Internet speeds have not been dependable
 - ii) Static on phone lines, with poor quality and calls that constantly drop off
 - (1) This issue prompted significant efforts to rectify this issue when a 911 call for emergency assistance failed last month (Town is working to change service and hardware)
 - (2) Limited ability to correct the problem due to restrictions placed on Town by owner and TDS vendor
 - iii) Computer hard lines are only provided to the office located in the locker room area in the rear of the building, and WiFi doesn’t adequately carry the signal to laptops and computers in the ‘lobby office’ area due to construction characteristics of the building
 - (1) Internet comes through main office of school and significantly downgrades over distance to gymnasium office
 - (2) Appears that the signal has continued to degrade with the addition of more tenants in the complex; however, the owner has offered no remedy to the Town, but has to tenants that pay full price rent
- C. Parking Lot
 - i) Owner paved the lot; with no notice to the Town of the costs to be shared until work was completed. Cost of Town ‘share’ is \$14,000 (equals 22% of total cost)

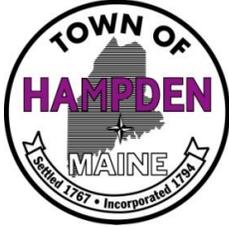
- ii) Anticipate additional charges to the Recreation Department for striping and costs to pursue change to striping plan that will make no changes to the spaces dedicated to Rec Dept
 - iii) Problem has been made exponentially worse since Bar Harbor Trust expanded its operations and increased staff, with notes being left on vehicles
 - iv) Original Striping Plan provides 21 parking spaces dedicated (per Lease Agreement) for use by customers of the Recreation Programs; however, not striped since early summer
 - (1) Comments are disrespectful of staff – blame them for not being able to just change plan without any review by Planning or Code Enforcement Officer
 - (a) Town is “holding-up the process and costing HHA LLC money”
 - (b) Owner’s representative has repeatedly told the Rec Director that “HHA and other tenants wish to stripe lot differently from approved plan” and delay is Town’s fault
 - (2) Owner’s representative refused to allow upper lot “Rec parking spaces” be lined in time for Fall basketball leagues – to be spiteful because delay is Town’s fault
 - (3) After months of complaining to Rec staff, the owner’s representative told Town staff revised site plan would be submitted for the required review process
- D. Plumbing and Hot Water Supply
- i) Water is a complicated issue due to the original configuration and connections, and the operational issues date back to 2014
 - ii) Water billing is based upon square footage versus usage – even though the Rec Dept uses very little water (new meter installed by Water District to measure usage)
 - iii) Lack of potable hot water for use in rest rooms, showers and the daycare facility that needs hot water to clean dishes for food preparation is a health and safety issue now being addressed by the Code Enforcement Officer
 - iv) Recent Water District increases, coupled with failing fixtures, leaks, and poor and misleading communications with the owner’s property manager and daycare managers have led to a serious overage cost this past quarter. Abatement has been requested.
 - (1) Caused by a leaking toilet in daycare that was allowed to run constantly for several days (with knowledge of the daycare owner)
 - (2) Water District contacted and assisted with exchange of meter from 2” to 1” that will reduce cost in the future
 - (3) Current water and sewer will reflect overages caused by others, but any possible abatement goes to the owner
 - v) Quotes have been obtained and will be presented for Council consideration to allocate Recreation Reserve Funds for installation of a new domestic hot water heater and connections required to supply hot water (Separate Memo)

Major Maintenance & Capital Improvement Issues

This list of issues relates to the maintenance and upkeep of the HHA complex generally, and to those with specific impacts to the Skehan Center. These directly impact the ability of the Recreation Department staff to sustain programs at the high levels of service to which our residents have come to enjoy and expect.

Terms of the current Triple Net Lease puts the Town at a significant disadvantage with regards to any major maintenance and repairs.

- A. When maintenance or repairs are performed by the owner, little or no prior notice is provided to the town or recreation staff
 - a. Makes these costs impossible to budget or prepare for in the municipal process
 - B. Major mechanical systems routinely fail, and/or will need replacement in the immediate future, or in some cases as will be demonstrated in detail below – should have been repaired or replaced already.
 - a. Several examples include:
 - (a) Overhead HVAC Air Exchangers
 - (b) Boiler for Heating System – excluded by existing lease
 - (c) Domestic Hot Water (Needs immediate remedy to satisfy health and safety concerns) and is also an issue being addressed by the Code Enforcement Office
 - (d) Roof (minor repairs may have been made; however, continues to be a problem)
 - E. Division and Responsibility for Tenant-Shared Utility Costs
 - a. Water (2”-minumum, 1” actual metered)
 - (a) This was already addressed by the recent replacement of the meter by the Water District; however, the Town incurred costs for plumbing support
 - b. Sewer Costs (based on water, and not an accurate reflection of Town’s % use)
 - c. Paying for heating costs for neighboring tenant
 - (a) Daycare bathrooms and hall area
 - d. The Town % of responsibility for charges change when other tenants move out
- 2) Grounds and Building Maintenance for Complex & Skehan Center
- C. Plowing and Mowing
 - i) Town (per the original lease terms) provides or contracts for these services for entire complex, not just the area leased specifically to Skehan Center
 - (1) This places the Town, and especially the Rec staff, in the middle of complaints made by other tenants about the levels of service, and responsibility for any damages
 - (a) This is inappropriate and unfair to the Rec staff
 - D. Concerns about the use of public funds for extensive improvements to leased property
 - i) Office space permanently relocated to the lobby, for customer service needed at the entrance to the building
 - ii) Windows and doors in Lobby are not energy-efficient and have extreme heat loss
 - (1) Contribute to higher utility costs paid by the Town
 - E. Gymnasium Floor requires a complete sanding and resealing
 - i) Has not been done since 1978
 - F. Parking Lot Issues (Also addressed above)
 - i) Skehan Center has (per lease) 21 dedicated spaces and 2 shared handicap spaces
 - ii) Rec spaces are routinely used by new tenants as adjacent space has been renovated and expanded
 - iii) Delay in re-stripping has exacerbated this problem, particularly now that Fall basketball tournaments have begun



Item 4. b (Two of Two)

MEMORANDUM

106 Western Avenue
Hampden, Maine 04444
Office: 207-862-3034
Facsimile: 207-862-5067

TO: Services Committee
FROM: Jim Chandler, Town Manager *JNC*
COPY: Shelley Abbott, Recreation Director
Sean Currier, Public Works Director
DATE: October 9, 2018
RE: Skehan Center Potable Hot Water Heater

Please find attached two estimates for the installation of alternative solutions for providing a potable 'domestic' hot water supply for the rest rooms and shower facilities at the Skehan Center. Staff requests the Services Committee vote to favorably refer this item to the next Finance & Administration Committee meeting on 15 October 2018; for eventual referral to Council for final authorization to expend the requested reserve funds.

Background

Town Recreation Department provides year-round cultural, recreational and community programs serving populations of all ages, including both youth and adult sports leagues, tournaments, and senior exercise programs at the Skehan Center in the Historical Hampden Academy. The Town currently leases this space for one (\$1.00) dollar per year, with the understanding that the Town pay for maintenance and repairs to the building and physical plant components and improvements to the leased space.

When the Town took over use of the space in 2013 the existing boiler heated the large water tank used by the entire campus. Since the cafeteria and other spaces weren't going to be used at that time it was decided to forgo domestic hot water until a more cost-efficient method was established. It has been five years and the owner has since established alternative provisions for potable domestic hot water to the other tenants; however, the gymnasium, locker rooms, rest rooms and lobby area have yet to be addressed by either the owner or the Town.

Recommendation to Install Potable Domestic Hot Water Heater

Staff recommends the acceptance of the lower of the two estimates received from Penobscot Temperature Control (attached) to accommodate the installation of an 80-gallon hot water heat pump in the Skehan Center. The quote covers the purchase of the equipment and plumbing necessary to supply hot water to the locker rooms and common area rest rooms for use by the public.

Fiscal Impacts

The cost of implementing this recommendation requires transfer of \$4,625.00 from Recreation Reserves Account 3-767-00 for payment to Penobscot Temperature Controls for notice to proceed with Estimate # 1211, dated 20 September 2018. This is a permanent improvement to the building and staff intends to request partial reimbursement from HHA LLC, as this is not an easily transferrable asset that

the Town would remove upon vacating the lease in the future; however, regardless of potential HHA LLC cost-sharing cooperation, this is an improvement needed by the public, long overdue. Also, this remedy will ultimately be required by the Code Enforcement Officer for health and safety reasons because this will also serve the daycare facility, which due to the plumbing configuration in this building, the Town shares its potable water supply.

Penobscot Temperature Controls, Inc.
54 Nadines Way
Hampden, ME 04444
(207) 945-9350
pentemp@myfairpoint.net



ADDRESS

Town of Hampden
106 Western Avenue
Hampden, ME 04444

ESTIMATE 1210

DATE 09/20/2018

LOCATION

Rec. Cente Boiler Room.

QTY	ITEM	DESCRIPTION	UNIT PRICE	AMOUNT
1	Materials and labor	Provide and install one Bock 30 gallon oil fired boiler to heat domestic hot water. We will connect smoke pipe to existing chimney. Install 100 feet of 1 inch copper pipe connected to existing water piping. Connect oil lines to existing oil lines. Install one 3/4 inch water mix valve. Hot water oil boiler start up and test out.	6,250.00	6,250.00

TOTAL \$6,250.00

Accepted By

Accepted Date

Thank-you for your business!!!!

Penobscot Temperature Controls, Inc.
54 Nadines Way
Hampden, ME 04444
(207) 945-9350
pentemp@myfairpoint.net



ADDRESS

Town of Hampden
106 Western Avenue
Hampden, ME 04444

ESTIMATE 1211

DATE 09/20/2018

LOCATION

Rec. Cente Boiler Room.

QTY	ITEM	DESCRIPTION	UNIT PRICE	AMOUNT
1	Materials and labor	Provide and install one AO Smith 80 gallon heat pump to heat domestic hot water. We will connect wire to existing wire panel Install 100 feet of 1 inch copper pipe connected to existing water piping. Install one 3/4 inch water mix valve. Hot water oil boiler start up and test out.	4,625.00	4,625.00

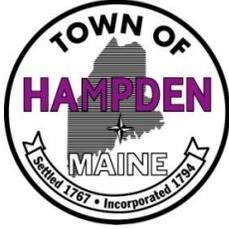
TOTAL

\$4,625.00

Accepted By

Accepted Date

Thank-you for your business!!!!



Item 4. c

106 Western Avenue
Hampden, Maine 04444
Office: 207-862-3034
Facsimile: 207-862-5067

MEMORANDUM

TO: Services Committee
FROM: Jim Chandler, Town Manager
COPY: Shelley Abbott, Recreation Director
Sean Currier, Public Works Director
DATE: October 9, 2018
RE: Interview/Potential Selection of Consultant for Western Ave Stormwater Permitting

This memorandum and the attached summary evaluation score sheet provide the committee with the results of the review process conducted by staff to determine which firm(s) to invite for an interview and fee negotiation.

Background

The Town began an internal planning process in late 2016 for pursuing the Maine DEP Stormwater Permitting required to construct the additional parking needed to fully utilize existing athletic fields on Western Avenue. An extensive public outreach process followed, and the services of on-call Town Engineer Woodard & Curran were engaged, supplemented by field work by Moyse Environmental, to begin a full project scoping process that included some preliminary concept designs. That process was suspended in late 2017 due to concerns about the proposed cost for securing the permit(s).

The Town renewed the process in August 2018 and solicited proposals from qualified firms interested in negotiating a fee for services to work with the Town on a project of more limited scope. This effort is more tightly focused and limited to just developing the permit-level-plans needed to apply for and successfully acquire the DEP SLODA permit(s) necessary to design the required stormwater facilities on the Western Avenue municipal properties. Known additional work includes completing the Site Plan Application required for acquiring Site Plan approvals from the Hampden Planning Board. Other potential permits may include approved access from Maine Department of Transportation if an exit turn lane is added to the existing Lura Hoit Pool driveway; and any additional wetland impact review (none anticipated) from the Army Corps of Engineers.

Once all necessary permits are approved and obtained, the Town may move forward with additional planning and final design of bid-ready construction plans to install the required stormwater facilities; however, that work is beyond the scope of this effort, and subject to future funding allocations.

Proposal Solicitation, Receipt and Evaluation

Staff received and evaluated four proposals from the following firms:

- CES Engineers, Brewer, Maine
- Kiser Engineering & Development Consultants, Hampden, Maine
- Plymouth Engineering, Plymouth, Maine
- SGC Engineering, Bangor, Maine

Evaluation of the proposals was conducted by Town staff, including: Shelley Abbott, Sean Currier, Joe Rogers and Jim Chandler. All four proposals represented similar approaches to the project, offered various strengths, listed experiences with similar work, and in the opinion of the review committee all the proposals demonstrated the qualifications needed to successfully complete the project.

Staff used an independent (proposals were scored individually) process and then scores were totaled to develop a summary score for ranking the proposals. Criteria used included the following:

- 1) Demonstrated successful completion of projects of comparable scope
 - a. Including prior experience preparing plans for SLODA approvals
- 2) Established competence and experience of proposed project team members
- 3) Draft Scope of Work articulating anticipated steps required to achieve stated goal
- 4) Estimates of time/scope for alternatives discussed
- 5) Rate Schedule, if provided for scope and tasks proposed
- 6) Local municipal experience and overall experience versus commercial / national projects
- 7) History of client satisfaction based on reference checks

The results of the aggregated scores from all four evaluators are presented on the attached summary and were further refined in discussions among team members to clarify any questions about the values used and methods of review. After discussing the individual reviews, the team decided the firm demonstrating the most comparable project experience is Plymouth Engineering. This firm also provided one the two most succinct Scope of Work-Task lists proposed, and finally – in following direction from Council, Plymouth offered the best rate schedule among those offered.

Staff conducted reference checks with five individuals listed by Plymouth Engineering to validate their record of achievement on similar municipal and private development SLODA permit projects in Maine, several of which are located in Hampden and many more in the greater Bangor region.

Staff has invited Plymouth Engineering to interview and discuss a Fee and Scope of Services. This is scheduled for Tuesday, October 9th and if a fee is negotiated, staff will present this information to the Services Committee for consideration; and possible recommendation to the Finance & Administration Committee and Council regarding the potential award of a contract for professional services.

Legal Issues

Upon direction from Council, once a final Scope and associated Fee for Services (set for an amount not to exceed \$ XXX) is arrived at with Plymouth Engineering, a draft contract for professional services may be developed for review by the Town's attorney.

Fiscal Impacts

A Fee for Professional Service is yet to be negotiated. If successfully negotiated during the interview and discussion of a finalized Scope of Services, that Scope will be presented to the Services Committee for its review. Following discussion with the Services Committee, if members are satisfied with the Scope and Fee proposed, then staff requests the proposed contract be favorably referred to the next Finance & Administration Committee meeting on 15 October 2018 for final review and approval. If approved, staff would seek favorable referral to the full Council for authorization to award a contract for professional services and encumber the appropriate reserve funds.

Evaluation Criteria	Value	Plymouth	CES	Kiser	SGC	Comments
Comparable Projects with SLODA as a Primary Product	30%	1	2	3	4	Plymouth - Best List of Comparable Projects & CES nearly as good.
Established Competence and Experience of Principle Team Members	25%	2	1	3	3	CES - Most Experienced Team & Best Task List.
Project Approach (Draft Scope of Services) & Elements	20%	1	2	4	3	Plymouth - Best Overall Approach. CES & SGC nearly as good.
Time Line & Projected Target Completion (Ours is Feb 1, 2019)	10%	1	1	3	3	Plymouth & CES have best timeline
Estimated Cost (Based upon Rate Schedule - no fee requested in RFQ)	10%	1	3	3	4	Plymouth has lowest Rate Schedule, CES is higher, Kiser didn't provide rates for sub-contractors, SGC didn't provide rates.
Other Observations (Articulate a Criteria)	5%	1	1	1	1	Local & Municipal Experience - Versus Commercial, National Projects Listed.
Prior Experience with this Firm	N/A	Even	Even	Even	Even	Not scored, as it was primarily an indicator for new manager, from staff.
Total: Lowest Score = Highest Ranking	100%	7	10	17	18	
Final Rankings:		1	2	3	4	Interviewing Plymouth and negotiating fee, if cost not satisfactory to Council, move on to interview CES.