

Standish Town Hall

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Town Council Meeting Minutes 2/14/2012

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THE TOWN COUNCIL – DRAFT**

**MINUTES
TOWN COUNCIL MEETING
STANDISH, MAINE
TUESDAY, FEBRUARY 14, 2012
STANDISH MUNICIPAL CENTER
7:00 P.M.**

CALL TO ORDER

The meeting was called to order by Chair Olson and the Pledge of Allegiance was recited.

ROLL CALL

Councilors present: Blanck, Olson, Pomerleau, Sargent, Stack and Thompson.
Councilor Spencer was excused.

MINUTES OF PREVIOUS MEETING (S)

The minutes from the January 10th and 24th meeting minutes were accepted as presented by unanimous consent.

PETITIONS AND COMMUNICATIONS

There were no petitions or communications at this meeting.

REPORT OF THE TOWN MANAGER

Chair Olson introduced Roger Mosley the Director of the Public Works Department who presented the departmental report.

Roger Mosley explained that at the Transfer Station in the past year solid waste volume is running about the same as last year. The recycling rate is in the 17 to 18 percent range. He reminded them that drop-off containers for recycling materials are at Patches' Store, the Steep Falls Fire Barn, the George E. Jack School; and at the Transfer station when that facility is open. He noted that last summer the highway crew did the surface paving on the Whites Bridge Road and Pequawket Trail in Steep Falls Village. He noted that culvert, ditch and brush cutting work was done on Deer Hill North in addition to paving. Heath Lane was also paved. He noted that during August, we were hit with Hurricane Irene. He said that we didn't have much road damage, however there was two weeks worth of clean-up from the downed trees. He said that the department facilitated the renovations at Johnson Field. He explained that they removed the trees, stumped it, had loam brought in, a total of sixteen new maple and ash trees were planted. Funding for this project came from a beautification grant that the town received. He noted that the Public Works Department will be putting out bids for the Route 25 end of Manchester Road and Emery Road projects.

PUBLIC HEARINGS

138-11 Amendment to Standish Town Code, Chapter 181, Article IX, Board of Appeals, Section 181-64, Powers and Duties [Blanck]

Moved Blanck seconded by Sargent and voted to dispense with the Clerk's reading of the ordinance.

Councilor Blanck said that this was a state mandate for making buildings accessible for persons with disabilities.

After a Public Hearing without additional public or Council discussion, the Council voted on the amendment and the hearing was closed.

VOTE: 6 Yeas

7-12 Application Submitted by Daniel Roberts/DD2C dba Maine Street Grill for Renewal of a Malt, Spirituous and Vinous Restaurant/Lounge License [Olson]

Chair Olson explained that all of the inspections have been completed on this application.

After a Public Hearing without additional public or Council discussion, the Council voted on the application and the hearing was closed.

VOTE: 6 Yeas

8-12 Application Submitted by Daniel Roberts/DD2C LLC dba Maine Street Grill for Renewal of a Special Amusement Permit [Olson]

Chair Olson explained that this permit allows live entertainment. All the necessary inspections have been completed.

After a Public Hearing without additional public or Council discussion, the Council voted on the application and the hearing was closed.

VOTE: 6 Yeas

9-12 Application Submitted by Daniel Roberts/DD2C LLC dba Maine Street Grill for a New for Coin-Operated Amusement Device Permit [Olson]

Chair Olson said that this is a new permit that will allow three or more coin-operated devices. She said that the Public Hearing is to attest to the worthiness of the owner. A criminal background check was run on the applicant to comply with the requirements of the ordinance. She noted that is sixteen-month application to allow it to get into the established expiration cycle.

Councilor Pomerleau asked what were coin-operated devices?

Dan Roberts, the applicant explained everything in vending falls under the coin-operated device regulations. He hoped to have pinball machines, the claw type of device that you can grab a prize, and maybe a foosball table. Some have asked for a poker machine, they don't payout winnings, they're just for amusement. He was not sure at this time what machines he'd be getting.

After a Public Hearing without additional public or Council discussion, the Council voted on the application and the hearing was closed.

VOTE: 6 Yeas

COMMITTEE REPORTS

Chair Olson said that the Finance Committee met yesterday to review the financials. She said that revenues are running slightly behind. She said that they also reviewed the writing-off of some tax accounts, an item is on the agenda tonight regarding this matter.

Chair Olson noted that the Sebago Lake Village Master Plan Advisory Committee met on February 8. They discussed the results of a preliminary survey and decided to broadcast future meetings of the committee.

Chair Olson explained that the Economic Development Committee scheduled for February 20 has been cancelled.

Chair Olson explained that last night she and Councilor Sargent attended the MSAD 6 meeting regarding their budget. She said that the School District will be facing challenges with this budget because some special funds under the AARA and the jobs bonds will be expiring. She encouraged anyone wanting to see what is happening with the school budget to participate with their budget process.

Councilor Sargent announced that the town is still looking for persons to serve on boards and committees.

Chair Olson said that there are no special qualifications, just the interest in being involved.

Councilor Pomerleau said that he could not agree more, we need people on several committees. He went on to say that that the Capital Improvements Committee discussed the 10-year capital plan. They also discussed purchasing police cruisers; he noted we have gotten out of sync in the purchase of these vehicles.

Councilor Pomerleau said that the Public Safety Committee met, they discussed the bridge on Main Street in Steep Falls, he noted that there is not a lot that the committee can do regarding that issue however they are monitoring the states plan. He went on to say that, the EMS banquet is coming up in the next month.

Councilor Blanck noted that the Ordinance Committee met last month, they continue to review the Conservation Sub-division plan. He was unable to attend the most recent meeting, however, from what he understands it's coming to completion. The next

meeting will be held next Tuesday.

CONSENT CALENDAR

There were no items on the Consent calendar at this meeting.

Moved by Stack seconded Blanck to take order 14-12 out of sequence and discuss it at this time. (Unanimous)

14-12 Execute Memorandum of Understanding with Portland Water District for Standish Beach [Tompson]

Councilor Tompson said that this committee has been working for over a year, she noted that the Town has had discussions regarding a beach since before 2006. She summarized that the 2006 Comprehensive Plan public survey documented that 68% of the respondents identified a town beach as one of the services that should be considered over the next 10 years. She explained that the current committee has been working with the Portland Water District to develop a Memorandum of Understanding (MOU) to facilitate this possibility. She said that the next step would be the first of many. First, the town would obtain easements for access to the beach, perform an engineering study of the development of the beach, finalize the design, create a management plan, construct the beach and lastly and most importantly Standish residents use and enjoy the beach. She explained that the Committee is recommending that the Council executes the MOU, that the another Beach Committee be appointed to move the process forward since the current Committee will dissolve since their mission has been completed. She noted the proposed composition of the committee which is described in the final plan. She said that she would request that the current members be appointed to the new committee to retain the continuity. She said in conclusion, the committee wanted to thank the members of the Sebago Lake Boat Club who attended many meetings. She also thanked Mr. Lunt and Mr. Miller from the Water District for their help on this committee. Again, she said that all of the current members would like to be appointed to the new committee because that feel that the congruency would be beneficial.

Chair Olson thanked them for their efforts.

Councilor Stack offered a special thanks to Wayne Newbegin for the work he did as the liaison on this project.

Moved by Stack seconded by Blanck and voted to receive the report of the committee. (Unanimous)

VOTE: 6 Yeas

EXECUTIVE SESSION

Moved seconded and voted to move into executive session at 8:05 pm with the town attorney pursuant to 1 M.R.S.A. Section 405(6)(E) to discuss the legal rights and duties of the Town Council relating to a land use enforcement matter.

Moved by seconded by and voted to arise from executive session. The Council arose from executive session by unanimous consent at 8:40 pm.

UNFINISHED BUSINESS

140-11 Order on Paul and Jacqueline Casto Request for Land Use Action (Tabled at the December 13 Council Meeting) [Olson]

Moved by Tompson seconded by Sargent and voted to remove this item from the table. (Unanimous)

Chair Olson explained that they had considerable discussion on this matter. The item was tabled because the Council wanted the matter to be heard before the Board of Appeals (BOA). She explained that it went before the BOA, however, the BOA did not act upon it because this issue happened in 2005 and now its 7 years later. They judged that too much time had past.

John Bannon of West Cumberland said that he was here tonight representing Paul and Jackie Casto. He said that this has been a frustrating process. He said that at this time the board has no more information than they had in December relating to this matter. He said that he was not sure if the board was familiar with what happened relating to this issue at the Board of Appeals. He said that the Chair had quoted part of what happened, but not all that happened. He said that he had filed an administrative appeal to BOA regarding the Code Enforcement Officer's decision that if there were violations they were too old to pursue or De-minimus. He said that he was not surprised that attorney McDaniel on behalf of her client argued that the BOA should not hear the matter. He said that he was very surprised on the night of the hearing to be handed a memorandum of law from the town attorney reporting to represent the Code Enforcement Officer arguing that the BOA should not hear the case because they lacked jurisdiction; and that the Code Enforcement Officer had prosecutorial discretion and that the appeal was untimely. He said that the ultimately the BOA found that the Castos' appeal was untimely and they could not hear them. He said that the town attorney took it as her charge to try to prevent the BOA from deciding the issue. He said that he thought that they wanted to know what the BOA's opinion was regarding if there were zoning violations on the Crockett property or not. He said that it was his opinion that in large part due to the town attorney the BOA never got to that point. He said that it is important that the Council avoid some confusion on what the council can do regarding this matter. He said even if the BOA ruled correctly that the Castos' appeals were not timely that in no way limits this Councils ability to bring a land use enforcement action against the Crockett's, he said that there is no statute of limitation for the town, he cited case law relating to this issue. He said that even if the Castos were not able to get

substantive answer to the questions, the board still has the authority to resolve the matter. He noted that this is not a public hearing to appeal the BOA decision, he said that he's not asking them to over-rule the BOA, but he is asking them to consider if they are in any better position than they were on December 13 to sign-off on a complete waiver of any land use violations in regards to the Crockett's. He said that there are conceded violations that the Code Enforcement Officer noted in his December 7 memorandum. He said that in addition there is a signed affidavit for Brent Hessler stating that he did work outside the permit. He said that the Council has three choices tonight, on is to adopt Order 140-11 knowing that you know nothing more about the issue; secondly is to reject Order 140-11 and direct the Code Enforcement to instate enforcement actions; or to continue to table this order and conduct their own investigation in the matter. He said that this is not a public hearing so it is not the time to present information. He asked that the board set this up for a public hearing where they can hear the competing versions of the truth.

Chair Olson said that at the BOA hearing the BOA did have separate legal representation from MMA.

John Bannon said that may be.

Chair Olson said that we didn't not have one attorney there for the two viewpoints. She said that they did spend sometime in their executive session learning what their options are.

John Bannon asked who assigned the town attorney to represent the Code Enforcement Officer at the BOA meeting?

Chair Olson said that she did not know that, the fact is it is fete accompli.

Town attorney, Sally Daggett asked if he was trying to suggest that there was some bar rule violation here, because there hasn't been. She said that in all the municipalities that they represent they appear before administrative boards and represent one of the parties of the board, the Assessor, Code Enforcement Officer or the board. She said that when those matters turn into litigation we continue to represent the town. She noted that he may not represent any municipalities, but that happens all over the State of Maine, there is no conflict issues there and there is no bar rule violation. She said that she resents any suggestion that that it's inappropriate for her to represent the Code Officer and then to advise the Town Council.

John Bannon said that he was not accusing her of any violations of bar rules. He said that he was stating that if an attorney is advocating in favor of the Crockett's position in the adoption of Order 140-11, he or she is not in a position to provide neutral advice to the Council on whether or not to adopt it, that was his position.

Attorney Sarah McDaniel representing Bruce and Bonnie Crockett spoke to the Council and thanked them for taking this item up on the agenda. She said that she had to disagree with attorney Bannon about what you know here tonight, you do know more than you did in December. She said that you know that the BOA considered the issue and considered the procedural posture before they considered the substance and they determined that these appeals were too late. She explained that was because they were 30-days after the building permits were issued, but in fact, the Castos' also alleged that the construction exceeded what was in the permit. Also, more than enough time has gone on since the Castos' had the opportunity to see that. She said that by both way of counting the Castos' are far beyond the 30-day appeal period. The ordinances apply to everyone in town not just landowners doing what they're supposed to be doing, but also neighbors challenging them. She said the reason for these time limits is to give some rest and respite. This is the second time that we've been here and every time they come the Crockett's have had to expend more time and energy in order to defend their actions. She said that the BOA did not get to the substance of the issue, she said that they had submitted extensive materials, she went on to say that that she has copies for them this evening if they'd like to receive them. She said that's what is important is that the BOA said that the timing is too late. She noted that it was her opinion that the Council, as Mr. Bannon had noted has three things that they can do, adopt the order, reject the order or hold another investigation. She said that they are asked them not to hold more hearings because that is more time and expense that the Crockett's have to bear. She said that after this amount of time has gone by that the Crockett's should not have to put up with that much going on. She said that they ask that the Council adopt the order tonight.

Chair Olson said that this has been reviewed internally and by the Appeals Board at this point in time taking action 7 years later, in her opinion was too late.

VOTE: 4 Yeas – 2 Nays

Chair Olson said that she wanted to make it crystal clear that we follow all of our land use ordinances, and ensure that this will be held to the correct standards going forward. Bringing up something 7-years later is just too late.

10-12 Write-off Uncollectible Real Estate Taxes [Olson]

Chair Olson said that the Moore property involves a mobile home with a homestead exemption; with the exemption it covers the taxes and the H.D.C is a tax acquired property that is land locked.

VOTE: 6 Yeas

11-12 Authorize Bonny Eagle Football Boosters to Operate Games of Chance [Olson]

Chair Olson explained that we had previously given the Bonny Eagle Boosters a blanket permit to do one game per month. The laws have changed, now it allows two games per month. This order adds the second date of March 24th. This application is complete and there have been no issues to date with any of the event that have been held so far.

Councilor Blanck asked if they wanted to include additional months.

The clerk said that the applicant would have to apply for that because they would have to pay according to the number of games per month.

VOTE: 6 Yeas

12-12 Annual Recommendation to Adopt 10-year Capital Plan [Pomerleau]

Councilor Pomerleau noted that that its pretty cut and dry this year. General administration is flat, public safety is looking at a thermal imaging camera and dry hydrants. Recreation is having problems with the 60 passenger bus. Linda Brooks met with them and is looking to add a 13 passenger bus, he said that the more he thought about it tonight he'd like to find a 25 - 27 passenger bus and bump up the amount to \$20,000. He said that there are some issues with drivers for busses over 13 passengers. He went on to say that that Public Works was pretty straightforward, they moved the truck out. We're looking at a dual axel truck for \$190,000 that we moved out a year, but what he suggested in Capital Improvements tonight was to putting in \$70,000 in this year's budget to purchase a used vehicle next year. The money would be for a used wheeler if one was found in the next year. If a used vehicle is found this year it will save us money next year. He said other than that we're looking at paving Job and Chicopee Roads this upcoming year. In addition, we are looking at a facility expansion at the public works garage. This has been in the process for three to four years. The sidewalk matching grant funds for Standish Corner is also in the Capital Plan. He said that even in tough times we have to keep the process moving forward. He said that this is a real good Capital Plan this year. The Fire Department moved a few pieces out a year or two. The Oak Hill Road connector is also part of the plan.

Chair Olson wanted to clarify the amounts that needed to be changed.

Councilor Pomerleau said that \$70,000 needed to be added to the Public Works FY 13 budget.

Chair Olson asked if that would remove the \$190,000?

Councilor Pomerleau said that it would not remove it but it might take it down. He said that even if we found a used truck we might need some equipment for it next year.

Chair Olson said that she'd like to reflect the reduction in the FY 15 of the \$190,000. She asked Roger if there was a number that the FY 15 could be reduced to.

Roger Mosley said that that you'd want to add the \$70,000 to truck 09 line.

Chair Olson asked if that then eliminates or reduces the FY 14 line? Should the \$190,000 become \$120,000?

Councilor Sargent asked if this PW-09 is this replacing an existing truck or adding a truck?

Roger Mosley said that it is adding a truck.

Chair Olson said then we would still need the \$190,000 in FY 14.

Councilor Blanck said that if we don't use the \$70,000 we could carry it over.

Councilor Thompson said that \$190,000 is in the FY 14 budget, but if you find a used truck this year we won't need to purchase the truck in FY 14.

Councilor Olson said that we could cross out the \$190,000 in FY 14 and that would still allow you to get a used truck and get the gear, and add \$70,000 in FY 13.

Councilor Pomerleau said that that you can't guarantee that we'll find a used truck. He said that there will still be expenses in FY 14.

Chair Olson said that then what we're doing in FY 13 is adding \$70,000 and crossing off \$190,000 in FY 14 at this time. Then on page 1 the multi-passenger van amount of \$12,000 will become \$20,000. She said that grand totals will be adjusted.

Pam Slattery asked about the connector road. She said that she wasn't aware of the workshop when it was discussed. She said that she wanted to thank all of them for their work on this she wanted to ask them about the status of the email she sent.

Chair Olson said that this point we're still looking at the design of the connector road. At this point in time it hasn't been discussed and we don't have an answer.

Mrs. Slattery asked when would they know.

Chair Olson said that tonight the Council is just approving the Capital Plan. She noted that she would asked the Town Manager to notify her of upcoming workshops.

Mrs. Slattery asked if they were taking that into consideration before any votes?

Chair Olson said absolutely, this is just start the budget process.

Councilor Stack said that he had a conversation with the Manager regarding the workshop and that there would be entrances allotted to abutters on the connector. He noted that the road at the Oak Hill end would not be moved. He said that he'd like to know from Roger if issue has been discussed and had they come up with any changes.

Chair Olson said that this is getting away from the order.

Councilor Stack said that you just told her this was a work in progress and nothing had been decided.

Chair Olson said that at this point we're not prepared to update her, but we will.

Councilor Stack said that she'd like to be updated before everything is finalized. He said he'd like to know if there had been a meeting in regard to the design of the connector since the workshop.

Chair Olson asked Roger Mosley if he was aware of any additional meetings.

Roger Mosley said that staff is reviewing and working with the engineering firm to go over the information that was received at the public hearing. He said that they are trying to schedule another meeting with the engineers.

Councilor Stack asked if that meeting would be opened to the public.

Chair Olson said that it would be a staff meeting working with the engineers. She said that it would not be appropriate until we're ready for the next step.

Councilor Thompson said that the workshop concerns were voiced regarding how the road were coming in. She asked if would behoove Mrs. Slattery to make an appointment with Bud Benson to voice her concerns so they're known.

Councilor Pomerleau said that we're going in stages here, he said that there will be parking, lighting, benches and trees in the plan. He questioned if they could move the fence if additional land became available.

Mrs. Slattery said that it was a stonewall.

Councilor Pomerleau said that people are concerned about the cemetery. He said that as a Councilor he would do anything to get a little more room up there.

Mrs. Slattery said tht she appreciated that. She said that she was taken a little aback when she had been told that the cemetery would be taken care of but then saw the fence she was concerned.

Chair Olson suggested that she make an appointment with the Planner to express her concerns. She said that we would do our best to keep her informed.

Paul Thompson said that he was concerned the sweep, curb cut on 14 Oak Hill Road, what will the tree line look like, will the crosswalk be addressed, will the sidewalk

Chair Olson asked if he had questions about the Capital Plan because they were not going to take up the Oak Hill design process now. She said that there is a line item in the plan for the project, but the design is not the discussion tonight.

Glenna Jamison said that she too would like to be notified of meetings regarding the connector road design.

Councilor Sargent said that he had a comment about the \$70,000. He said that he thought that it is a good idea to look for good used truck. He said that we wanted a truck for \$190,000 but decided that we couldn't afford it this year. He said that it was taken out and now we're adding it back in and we're not reducing the fleet by one unit. He said that this is going to be an additional truck, he said that he'd like to go on the record that he supports getting a replacement truck but not adding a truck in this budget process. He said that the taxes are coming in pretty well, but people are not building homes or additions and other revenues for the town are down. He said that he can't in good faith say if we can find a good deal and spend \$70,000 on a truck that will sit in the yard.

Councilor Pomerleau said that he never said that they wouldn't use it, he thought that they'd use it everyday, it would take the place of 2 seven yard dump trucks. He said that this truck if we even buy it, it won't sit in the yard. He would never buy a truck to sit in the yard.

Councilor Stack said that his understanding was that truck 9 was needed because we were thinking about hiring a new person for public works because we were thinking about doing away with the contract plowing. If we did that we'd need another truck to do the plowing. We moved the \$190,000 out a year, this information tonight is all new. He said that he is surprised to see another truck because we're not hiring the person this year. He said that he followed what Phil was saying that the wheeler would be better than a smaller truck. He said that his understanding of the line item was based on hiring another person.

Chair Olson asked Roger Mosley to clarify if truck 9 already exists.

Roger Mosley said that this was part of the proposal with the new hire. He said in tonight's Capital Improvements meeting Councilor Pomerleau suggested putting money into finding a used truck.

Chair Olson said that the idea is to try to take advantage of the current market to see if a used truck could be purchased now to save money.

Councilor Pomerleau said that we moved it out because we were nervous about the truck and the gear costs.

Roger Mosley said that FY 15 is the year to purchase a replacement truck.

Councilor Pomerleau said that a truck probably won't even come along.

Chair Olson said that if we do accept the Capital Improvements recommendation and put it into the budget process, at that time when we see projected revenues, we could take it out if necessary. It does not commit us to all or none. If we can't take advantage of purchasing a truck we won't be buying one. She said that this can become part of our deliberation in the budget process and at this point this is the Capital Improvement Committees request for capital items for the FY 13 budget.

Councilor Pomerleau said that Chair Olson was right it could be removed at any time. He went on to say that if he didn't put it in tonight there will never be any discussion on it through out the year.

Moved by Pomerleau seconded by Blanck and voted to amend the 10-Year Plan:

Public Works - Add \$70,000 to be added to FY 13 for PW 09 Truck
Recreation – Amend \$12,000 to \$20,000 to FY 13 for Bus (Unanimous)

VOTE ON ORDER AS AMENDED: 6 Yeas

Councilor Pomerleau said that he wanted to thank all the Department Heads that brought forward budgets based on just what they needed.

13-12 Call for Public Hearing for the FY 13 Municipal Budget [Olson]

Chair Olson explained that by Charter we are required to hold this Public Hearing on the budget.

VOTE: 6 Yeas

PUBLIC ITEMS

Paul Thompson of Cram Road said that he was concerned with the sweep on the Oak Hill connector road, the 14 Oak Hill Road curb cut, the tree line on the connector road, and the crosswalk at 15 Ossipee Trail West. He asked if any crosswalks are planned on Route 25?

Chair Olson said that at this point in time it is still in the process. She said that she received a copy of the Town Manager's notes that point out that the design has been refined to provide 30-foot spaces on each side of the road for further curb cuts to accommodate Mark Floor and Paul Thompson. Some of the parking on the west side has been moved to parallel parking on the east. The engineer indicates that the road cannot be moved to the east any further due to the radii needed. The sidewalk in front of Paul's store will be reduced in width to preserve parking. The lands adjacent to the cemetery are within the drainage area and not suitable for additional grave sites. She said that is the information that we have currently at this time. She noted that his comments at the public hearing were noted and will be included in the next iteration.

Paul Thompson asked if that paperwork that she just read available for the public.

Chair Olson said that she had read the Town Managers update as of February 2.

Paul Thompson questioned if the sidewalk across from 15 Ossipee Trail W was granite?

Chair Olson said that she didn't know, she suggested that he contact Bud Benson for additional information.

Paul Thompson asked if there would be additional workshops on the item?

Chair Olson said that when there is another draft there will be the opportunity for public discussion. She said that she did not know the timeframe of any public hearings.

Councilor Thompson asked if there was a committee in place that could answer Mr. Thompson's questions.

Chair Olson said interested parties should contact the Town Planner, Bud Benson.

Councilor Pomerleau said that the Town Council is the committee and there will be additional public meetings on the connector road. He said that we still don't have a final design, it's still a work in progress.

ANNOUNCEMENTS

Several upcoming meetings were announced.

EXECUTIVE SESSION

An additional executive session was not needed at this meeting.

John Sargent said that would be unable to attend the next Ordinance Committee meeting.

ADJOURN

Moved by seconded by and voted to adjourn. The meeting adjourned 9:13 p.m. by unanimous consent.

Submitted by: _____
Clerk/Secretary

PLEASE NOTE: THESE MINUTES ARE NOT VERBATIM. A VIDEO RECORDING OF THE MEETING IS AVAILABLE AT THE TOWN CLERK'S OFFICE DURING REGULAR BUSINESS HOURS