

**MINUTES
TOWN COUNCIL MEETING
STANDISH, MAINE
WEDNESDAY, DECEMBER 9, 2020
STANDISH MUNICIPAL CENTER
6:00 PM**

CALL TO ORDER

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

ROLL CALL

Councilors present: Butler, Delcourt, Leclerc, Libby, Paul and Pomerleau. Councilor Gaba attended the meeting remotely via Zoom. The Clerk explained that due to the uncertainty if the viewing audience will hear Councilor Gaba, the Clerk will be paraphrasing Councilor Gaba's remarks so that the viewing audience will know what she is saying.

MINUTES OF PREVIOUS MEETING (S)

Moved by Libby seconded by Leclerc and voted to approve of minutes from the November 10, 2020 Town Council meeting. (Unanimous)

PETITIONS AND COMMUNICATIONS

The Clerk read a thank-you note from the Steep Fall Village Improvements Society for the budgetary support that the Town had provided them for maintenance for the park.

REPORT OF THE TOWN MANAGER

Departmental Report – Finance Department – Scott Gesualdi and Town Auditors
Town Manager – Summary of Planning Board Memo Regarding Marijuana Regulations

Town Manager, Bill Giroux, noted that the Planning Board memo will be discussed later on the agenda and then he introduced the Finance Director.

Finance Director, Scott Gesualdi explained that Hadje Esmiller from the Town's audit firm Berry Talbot and Royer is here this evening to present the annual financial presentation.

Audit Director, Hadje Esmiller explained that the firm met on November 9 with the Finance Committee, Bill Giroux and Scott Gesualdi to provide a review of the Town's finances. Mr. Esmiller said that before them they have the audit report and a letter. Starting with the mandatory governance letter Mr. Esmiller explained the letter includes the components of the audit that are required to be provided to the town. The letter highlights the scope of the audit, compliance with the firm being independent in their review, the aspects of the Town's accounting practices, and other aspects of the audit process. He pointed out that their review of the Town's finances are done to obtain a reasonable assurance that the Town's financial statements are free of material misstatement. He noted that since they only take a sampling of the Town's transactions, they cannot give absolute assurance of the statements. He noted that the Town did not adopt any new accounting policies, and follow those that have been adopted. As far as accounting estimates, it's the same that's been reported in the past. The letter also explains that any adjustments were brought forward from Scott not discovered in the audit. Mr. Esmiller announced that Scott and the finance team were very well prepared for the audit. He presented a high-level over view of the

actual audit report, noting that the auditor's report is a required statement which states their opinion of the Town's finances. Their opinion is that the audit is a clean or unmodified opinion, and that is the best opinion that would be presented in an audit of this type. He explained that pages 3 through 15 are the Management Discussion and Analysis which describes the financials in an easy-to-understand format. Pages 16 through 22 are the actual financial statements. Pages 23 through 37 are the notes that explain the financial statements. Pages 38 and 39 are the RSI or required supplemental information. Pages 40 through 52 are additional supplemental notes that the Town wants included in the report but are not required. Circling back to the management discussion and analysis it describes how the Town's undesignated fund balance has a \$674,000 increase. He noted that the Town is getting in the range of undesignated fund balance as suggested in the policy. He thanked Scott and the finance team for their work.

PUBLIC HEARINGS

98-20 Amendments to Standish Town Code, Chapter 151, General Assistance Ordinance, Adopt Updated Ordinance and Tables for the Maximum Levels of Assistance as provided by the Maine Department of Health and Human Services [Leclerc]

Councilor Leclerc explained that this is an annual update to the ordinance to provide the new rates to recipients of the General Assistance Program.⁷

Chair Pomerleau called for public discussion, hearing none, she called for Council discussion, hearing none she called for the vote and the Public Hearing was closed.

The Town of Standish hereby ordains the following amendments to the General Assistance Ordinance, effective immediately upon adoption:

ORDERED that the new model ordinance and all tables for the overall maximum levels of assistance, which includes dollar figures, rates, percentages and tables, which are determined by the Maine Department of Human Services for use in the General Assistance Program, are approved by Council beginning October 1, 2020.

Note: A copy of the complete ordinance is on file at the Town Clerk's Office.

VOTE: 7 Yeas

COMMITTEE REPORTS

Councilor Paul – Personnel Committee – met on December 8 as required with employees to obtain their ideas for the upcoming budget.

Councilor Delcourt – Appointments Committee met this evening; they have items on the agenda tonight.

Councilor Libby – Finance Committee – met on Monday, he reported that revenues and expenditures are right on track.

Councilor Gaba – PWD Steering Committee – no report.

Councilor Butler – Economic Development Committee – met about two weeks ago and presented to the Ordinance Committee potential amendments to the Land Use Ordinance for their consideration.

He explained that the committee plans on promoting the local trails system particularly the trails near Randall's Orchard. Print ads or website notices will be used to get the word out to the public.

Councilor LeClerc – Ordinance Committee – reported that they reviewed and discussed the list that was presented by the Economic Development Committee for consideration of possible amendments. They will continue to review the proposed amendments to the Form Based Code in segments, to try to make the code business friendly.

Councilor Pomerleau – Capital Improvements - no report.

Councilor Delcourt stated that the Economic Development Committee forwarded recommendations to the Ordinance Committee, he noted that he is not a member of either of these committees. He expressed his opinion that Councilor Butler has a conflict of interest regarding this matter.

Councilor Leclerc explained that the Ordinance Committee reviewed the potential amendments, however they did not discuss any particular parcels in the Form Based Code. He said that he took a look from a higher perspective, such as setbacks and the mandate for developers to clear sidewalks in the winter.

CONSENT CALENDAR

There were no Consent Calendar items at this meeting.

UNFINISHED BUSINESS

There were no items of Unfinished Business at this meeting.

At this time, Mr. Giroux explained that the Town's attorney has not arrived and orders 107-20 and 108-20 should be tabled until later on the agenda.

Moved by Pomerleau seconded by Libby and voted to table orders 107-20 and 108-20, until later on the agenda, awaiting the arrival of the Town's attorney.

VOTE TO TABLE ORDERS 107-20 and 108-20: 7 Yeas

NEW BUSINESS

109-20 Application Submitted by Stephanie Biggs for Renewal of a Combined Massage Establishment/Massage Therapist License at Kosmetikos Skin Care located at 15 Ossipee Trail West, Suite 2 [Pomerleau]

The clerk explained that the inspection has been completed and the application is on file at the Town Clerk's Office.

Chair Pomerleau called for public discussion, hearing none, she called for Council discussion, hearing none, she called for the roll call vote.

ORDERED that the application submitted by Stephanie Biggs for renewal of a Combined Massage Establishment/Massage Therapist License at Kosmetikos Skin Care located at 15 Ossipee Trail West, Suite 2, upon the recommendation of the Code Enforcement Officer, Fire Chief, Health Officer and Town Manager, is approved by Council, to expire December 31, 2021.

VOTE: 7 Yeas

110-20 Application Submitted by Bryan Bizer for Renewal of a Massage Therapist License at Kosmetikos Skin Care located at 15 Ossipee Trail West, Suite 2 [Pomerleau]

The clerk explained that the inspection has been completed and the application is on file at the Town Clerk's Office. inspectors

Chair Pomerleau called for public discussion, hearing none, she called for Council discussion, hearing none she called for the roll call vote.

ORDERED that the application submitted by Bryan Bizer for renewal of a Massage Therapist License for employment at Kosmetikos Skin Care located at 15 Ossipee Trail West, Suite 2, upon the recommendation of the Code Enforcement Officer, Fire Chief, Health Officer and Town Manager, is approved by Council, to expire December 31, 2021.

VOTE: 7 Yeas

111-20 Application Submitted by Xiong Tran for Renewal of a Massage Therapist License at Kosmetikos Skin Care located at 15 Ossipee Trail West, Suite 2 [Pomerleau]

The clerk explained that the inspection has been completed and the application is on file at the Town Clerk's Office.

Chair Pomerleau called for public discussion, hearing none, she called for Council discussion, hearing none she called for the roll call vote.

ORDERED that the application submitted by Xiong Tran for renewal of a Massage Therapist License for employment at Kosmetikos Skin Care located at 15 Ossipee Trail West, Suite 2, upon the recommendation of the Code Enforcement Officer, Fire Chief, Health Officer and Town Manager, is approved by Council, to expire December 31, 2021.

VOTE: 7 Yeas

112-20 Town Council Appointments to the Greater Portland Council of Governments General Assembly [Delcourt]

Chair Pomerleau called for public discussion, hearing none, she called for Council discussion, hearing none, she called for the roll call vote.

ORDERED that the following individuals are appointed to the following board or committee through the date given:

Appointee	Board/Committee	Term Expires
Kimberly Pomerleau	GPGOG General Assembly Mbr	December 31, 2021
Michael Delcourt	GPGOG General Assembly Mbr	December 31, 2021
Zachery Mosher	GPGOG General Assembly Alt Mbr	December 31, 2021

VOTE: 7 Yeas

113-20 Town Council Appointment of the Registrar of Voters [Delcourt]

Chair Pomerleau called for public discussion, hearing none, she called for Council discussion, hearing none she called for the roll call vote.

ORDERED that the following Town Council appointment is made through the date given:

Mary Chapman Registrar of Voters through January 1, 2023

VOTE: 7 Yeas

Moved by Libby seconded by Paul and voted to take orders 107-20 and 108-20 off the table.

VOTE TO TAKE ORDERS 107-20 and 108-20 OFF THE TABLE : 7 Yeas

The Clerk explained that in the packets they had received a memo from the Town's attorney titled *Possible Town Councilor Conflict to Interest Issue*.

107-20 Amendments to Standish Town Code, Chapter 181, Land Use, Regarding Adult Use Marijuana Establishments (Cultivation Facilities) and Medical Marijuana Dispensaries [Paul]

Moved by Paul seconded by Libby and voted to discuss the possible Town Councilor conflict of interest.

VOTE TO DISCUSS CONFLICT OF INTEREST: 6 Yeas - 1 Abstain, Butler

Mr. Giroux noted at a couple of Town Councilors and others had brought forward the discussion of a possible conflict of interest with one Councilor regarding adult use marijuana cultivation in the Industrial Zone. He said that the best way to discuss this matter is when the topic is on the agenda. He said that Sally Daggett the Town's attorney is here tonight to guide them through the discussion and answer questions that they may have.

Chair Pomerleau asked the Councilors if there were any question for Sally and if they understood what the memo provided for information.

Councilor Libby said that even if there isn't any direct conflict there is a perceived conflict. Therefore, the Councilor needs to be recused.

Chair Pomerleau agreed with Councilor Libby's comments. Then Chair Pomerleau for call for additional Council discussion.

Attorney Daggett suggested that Councilor Butler speak to the memo.

Councilor Butler said that he was waiting to go through the three-step process outlined in the memo. He said that the allegation is that there is some sort of a conflict of interest surrounding the fact that he owns a building in an Industrial Zone, in which he rents space to tenants. He said that somehow it is perceived that this would be an issue for him to vote on the adult use marijuana matter. He said personally he didn't see the connection. He said that his main business is metal casting. He explained that he has extra space that he rents to whoever would like to rent the space. He noted

that the space is rented by medical manufactures and medical marijuana caregivers. He said that it was his opinion that if he votes for or against a marijuana cultivation ordinance, he stands to not gain financially whether it passes or it doesn't. He then cited a scenario where they were voting on a contract to award a bid to him, then that would be a conflict because he would have a direct financial benefit. He said that there is no such tie on a vote that has anything to do with adult use marijuana. He said, first, his building is full and all of the leases are multi-year leases that don't expire for some time. He said that he'd like to understand the perceived conflict of interest.

Chair Pomerleau said that you collect rent from your tenants, and that is a conflict of interest in her opinion.

Councilor Butler said that his rents have nothing to do with the Adult Use Marijuana Ordinance, he will receive the rent either way. He said that his benefit is no more than any other Councilor's interest, he then paraphrased a section of the attorney's memo. He suggested that anyone could have the same opportunity if this ordinance was adopted. He said all he does is rent property, he stated has no financial interest in any medical marijuana company, any recreational marijuana company, he said that he is solely a landlord.

Chair Pomerleau said that you collect money for the rents.

Councilor Butler said that he will collect no more or less based on this ordinance. He asked where is the money coming to him, because he voted on an Adult Marijuana Ordinance?

Councilor Libby brought up a similar instance where Councilor LeClerc recused himself on a bid award regarding the food pantry because he is on their board. He said that it is the same perceived conflict of interest. He said that whether it's real or not the public sees it as a conflict of interest.

Councilor Delcourt asked if he has a family member that's involved in the marijuana business?

Councilor Butler announced that he has an adult daughter who lives in a separate household that rents space from him. She is medical marijuana caregiver, that has nothing to do with the Adult Use Marijuana.

Councilor Paul said that he had the same question about family members. He continued, saying that you say that they don't want to provide adult use marijuana, but they can't now. If this is adopted, they could provide adult use marijuana.

Councilor Butler said anyone could. He stated at this time there is one tenant that is interested in adult use marijuana. He said that whether this ordinance passes or not that person is in a lease with him for the next five-years. He said that he makes the same amount of money whether it passes or not. He said that he has a lot to offer in the preparations of this ordinance. He stated that his platform for running for office was to enhance the economic development in Standish. He said that biggest economic development opportunity in the state is adult use marijuana. He said that part of his platform was not, if we do it, but how we do it. He said that he could help set the rules and would have no financial interest.

The Clerk repeated Councilor Gaba's question of how are his leases determined for the facilities he rents?

Councilor Butler said that they are contracts based on a price per square foot.

Councilor Butler said that there would be no changes in the leases based on this ordinance being approved.

The Clerk repeated Councilor Gaba's question for the viewing audience, would there be changes in the leases if this ordinance was approved?

Attorney Daggett said that the Town Council seems to be focused on the financial piece of the conflict of interest, but it includes the broader issue of the board member having a special interest. Daggett explained that a special interest is having a better opportunity than the public generally. She explained that statutorily a conflict of interest is mainly regarding financial interests. She said that Maine case law gets into the larger question of special interest meaning does the board member have an interest that is different from the public generally which are defined in the code of ethics. She wanted them to know that it's more than a financial interest.

Chair Pomerleau said that it's a moral issue.

Councilor Butler said that he points out that his interests are not more than the general public. He said that the public voted to approve marijuana use and over 60% voted for him based on his economic development ideas based on this adult use marijuana.

Attorney Daggett reviewed the process as follows: first, have the Councilor disclose the conflict of interest, which Councilor Butler has done. Next, the Councilor has to indicate whether he can be deliberate impartially on the issue. Then, the balance of the Town Council will vote as to whether to excuse him from voting on the matter. She noted that a 3-3 would allow Councilor Butler to participate in the discussion of the adult use marijuana ordinance. If it is determined that Councilor Butler has a conflict of interest he should then sit in the audience.

Councilor Leclerc said that has been an inquisition because he owns a building in the Industrial Zone. He said that being said there are many other parcels that could be developed if this ordinance was approved. Councilor Leclerc said it was his opinion that Councilor Butler is sufficiently removed the matter to be able to vote. He said as far as his daughter, they live in separate households and he is a landlord. He noted that the proposed ordinance has provisions in place for Town oversight on the implementation of the adult use requirements.

Chair Pomerleau asked for clarification on the next step in the process.

Sally Daggett said that Council Butler needs to disclose whether he can be fair and impartial in the discussions regarding adult use marijuana and perhaps medical marijuana. She noted that if there is a motion made, it should be to recuse Councilor Butler from participating.

Councilor Butler stated that he could definitely be impartial.

Sally Daggett explained since the *Rules of Procedure* requires Councilors to vote, a motion if made, should read that Councilor Butler is excused from participating on adult use and medical marijuana matters on this and future agendas.

Councilor Paul said although Councilor Butler states he received 60% of the vote and that the voters voted to approve marijuana use; the perception is still that there is a conflict of interest.

Councilor Libby said it was his opinion that there is a conflict of interest, therefore he needs to be excused from participating.

Moved by Libby seconded by Paul and voted to excuse Councilor Butler from the participation in the Town Councils consideration of proposed ordinance amendments related adult use marijuana and/or medical marijuana establishments.

VOTE: 4 Yeas, Delcourt, Libby, Paul and Pomerleau - 2 Nays - Gaba and Leclerc

At this time, Councilor Butler took a seat in the audience.

Maurie Hill, a resident, said that this vote has long term implications on the Councilor in question being able to vote on the matter in the future.

Attorney Daggett clarified that that the vote to excuse Councilor Butler from participating on today's marijuana items and theses same orders if they move forward. Future, new ordinances regarding marijuana would perhaps have the same discussion regarding excusing Councilor Butler.

Attorney Daggett provided an overview on order 107-20 which would allow adult use marijuana cultivation in the Industrial Zone. In addition, there are some tweaks to the Performance Standards in the existing ordinance. The Performance Standards currently relate to medical marijuana, the amendments include the adult use provisions. The amendments also update the medical marijuana provisions to current state law. She explained that state law now provides that if a municipality wants to allow adult use marijuana establishments the municipality has to opt in. She noted that there are four different types of facilities: cultivation facilities, testing facilities, manufacturing facilities and retail facilities. She explained what is before them tonight is just to allow adult use cultivation facilities. She said that the Town started discussing adult use marijuana facilities about a year ago. Three workshops were held, two different ordinances were presented in January, one was for testing the other was for manufacturing facilities, both of these proposals failed. Order 107-20 limits the adult use facilities to cultivation in the Industrial Zoning District.

Chair Pomerleau called for public discussion.

Maurie Hill, a resident, wanted clarification as to what growing means?

Chair Pomerleau replied growing in the Industrial Zone.

Maurie Hill asked where are the Industrial Zones?

Mr. Giroux noted the Moody Road area and a small location in Steep Falls.

Maurie Hill questioned that this is just for cultivation?

Mr. Giroux said yes, however there will be a discussion later tonight regarding medical caregivers.

Attorney Daggett noted that the cultivation is indoors only.

Chair Pomerleau called for additional public discussion, hearing none, she closed public discussion and called for Council discussion.

Councilor LeClerc cited a recent Portland Press Herald article that stated marijuana will become Maine's most valuable crop. It was his opinion that Standish should be ahead of the curve and move this forward. It's a small step, most people won't even know it's there, noting that if you search the internet for jobs, jobs relating to marijuana is much of what you find. The Town Council can control the growth of the industry. To him this is a sensible approach.

The Clerk paraphrased Councilor Gaba's comments as follows: initially the Town Council was concerned to make the step, but since it the start there have been very few issues state-wide and she echoed Councilor LeClerc's comments that this is a good economic development opportunity.

Councilor Paul said that we already have cultivation in town, it's medical and residents can grow at home. He said this will allow adult use cultivation, there is not going to be a store where you can go and buy the product.

Mr. Giroux agreed that retail sales are not allowed under these amendments.

Chair Pomerleau asked if Councilors Delcourt and Libby had any comments, hearing none, she called of roll call vote.

The Clerk noted that this vote moves the order on to First Reading at the January Meeting.

VOTE TO MOVE THE ORDER TO FIRST READING: 3 Yeas – Gaba, LeClerc and Paul – 3 Nays Delcourt, Libby and Pomerleau – Motion failed

108-20 Amendments to Standish Town Code, Chapter 220, Retail Marijuana Establishments and Retail Marijuana Social Clubs [Paul]

Attorney Daggett explained that this is a companion order to order 107-20, so if you had moved forward on 107-20, you should have moved forward on this order.

The Clerk read the introduction of the order.

Attorney Daggett said that since order 107-20 failed, this order should be indefinitely postponed, since its related to 107-20.

Moved by Libby seconded by Pomerleau to indefinitely postpone order 108-20.

Councilor LeClerc questioned if this is indefinitely postponed is there a time-frame to bring it back up?

Chair Pomerleau said that the laws regarding marijuana have changed and she'd like to have a workshop in January relating to the matter.

Just as a reminder, Mr. Giroux said that he still has to discuss the Planner's memo regarding marijuana caregiver regulations. However, this current discussion is regarding the repeal of Chapter 220 regarding retail marijuana establishments and retail marijuana social clubs that are currently in the Town's Ordinance. He noted a vote to indefinitely postpone this now leave the ordinance in place until you make a change. He noted that there are loopholes in the caregiver laws that may allow caregiver operations throughout a town.

Moved by Libby seconded by Pomerleau and voted to indefinitely postpone order 108-20.

VOTE: 6 Yeas

SECOND PART OF TOWN MANAGERS REPORT

Mr. Giroux said that he was having second thoughts about this portion of the Managers Report due to the complexity of the marijuana issue. He said as suggested by the Council Chair this should be taken up at a workshop. Basically, what they are concerned about is the increased interest in medical marijuana caregiver provisions defined and allowed under state law. He expressed his concerns that if we're not careful caregiver operations would be allowed in sub-divisions and other areas. He suggested that the Town Council hold a workshop as to where in town marijuana caregivers could operate. He noted that the municipality can establish where marijuana caregivers can operate. He said that he thinks there should be regulations in place to protect the Town.

Attorney Daggett said that the municipality has to opt in to the marijuana caregiver provisions just as the must for the adult use marijuana regulations.

Mr. Giroux said that since there are protections in place, a workshop can be scheduled in January on a date that both Attorney Daggett and the Planner can attend.

ANNOUNCEMENTS

Upcoming meetings were announced.

PUBLIC ITEMS

Maurie Hill, a resident, questioned if existing medical marijuana care givers would be grandfathered?

Mr. Giroux said it would be difficult to comment on any grandfathered marijuana caregivers, it would depend if they had the proper permits and licenses when they went in to business.

Maurie Hill asked if residents can attend the workshop?

Chair Pomerleau noted that the public can attend workshop but not speak.

Mr. Giroux explained that workshops are meant for a way to present information about a issue to the Council in a learning process. Frequently, at workshops the public is allowed to ask a question.

Maurie Hill, asked for clarification about Councilor Butler speaking to marijuana issues.

Mr. Giroux noted that new marijuana issues would be separate discussions where a new discussion would perhaps take place regarding any conflict of interest.

Samuel Matthews, Broadturn Road, Scarborough, a potential business owner at 5 Oak Hill Road – cited a recent discussion with the Code Enforcement Officer regarding a medical marijuana cultivation facility. Based on that discussion, a permit was to be issued if tonight's marijuana ordinance moved forward. Since those votes failed where does he stand on his project?

Mr. Giroux said that it's not permitted, unless the Council changes the rules.

Mr. Matthews said that he's trying to find clarity on his status now.

Mr. Giroux said to contact the Code Officer in the morning.

Councilor Delcourt asked for an update from the attorney regarding the Dolloff Road junkyard code matter.

Sally Daggett was not able to comment on the matter because she was not certain of the details of the particular matter since she has discussed a number of land use violations with the Code Enforcement Officer.

EXECUTIVE SESSION

Moved by Pomerleau seconded by Libby and voted to move into an Executive Session for the discussion of a personnel matter pursuant to 1 M.R.S.A. Section 405(6) (A). The Town Manager, Fire Chief, Councilor Gaga via Zoom and Town Attorney will attend the Executive Session. No further Council action will take place after the close of the Executive Session. (Unanimous)

A motion may be made to go into executive session at any time during the meeting in accordance with state law to discuss, personnel, real estate, labor negotiations, or legal matters.

ADJOURN

Moved seconded and voted to arise from the Executive Session. The Council arose from the Executive Session at 8:00 p.m. by unanimous consent and the meeting adjourned.

Submitted by: _____
Clerk/Secretary

Mary C. Cupa