

**HOLDEN TOWN COUNCIL
REGULAR MEETING
Monday June 15, 2015
Holden Municipal Building
6:00 P. M.**

MINUTES

1. Call to Order

Chairman Harvey called the meeting to order at 6:00 P.M.

Members present: Robert Harvey, Chairman; Rod Black, Vice Chairperson; Paul Amoroso, Councilor; Ralph McLeod, Councilor; Tom Copeland, Councilor.

Others present: Benjamin R. Breadmore, Town Manager; Sherry Murray, Treasurer; Christopher Beaumont, Firefighter; Pat Sirois; Kerry Zimmerman; Wanda Libbey, Town Clerk; Bruce Dowling, Public Works Director; Gene Worcester, Police Chief; Eugene Fizell, Police Sargent; Richard Barclay; Jane Black; Ellen Campbell; Karen Eaton – Eaton Paving; and other members of the public.

2. Pledge of Allegiance

Chairman Harvey led the Pledge of Allegiance.

3. Moment of Silence

Chairman Harvey asked for a moment of silence to reflect on someone or something positive that has touched their lives since we last met.

4. Elect New Council Chairperson and Vice Chairperson

Councilor McLeod moved, Councilor Amoroso seconded; to nominate Rod Black to serve as Chairperson for the coming fiscal year. Vote 4-0-1 in favor. Councilor Black abstained.

Councilor Amoroso moved, Councilor McLeod seconded; to nominate Tom Copeland to serve as Vice Chairperson for the coming fiscal year. Vote 4-0-1 in favor. Councilor Copeland abstained.

5. Public Comment

Richard Barclay inquired about refinancing the Waterline Bond to get a lower interest rate.

6. Approval of Minutes for May 18, 2015 Regular Town Council Meeting

Councilor McLeod moved, Councilor Copeland seconded; to approve the minutes of the May 18, 2015, Regular Council Meeting. Vote 5-0 in favor.

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7. Consent Agenda

A. Financial Warrants

Councilor Copeland moved, Councilor McLeod seconded; to approve the financial information as noted. Vote 5-0 in favor.

FY 2014/2015 Journal Entry #539 for:	\$ 114.00
FY 2014/2015 Journal Entry #501 for:	\$ 32,478.52
FY 2014/2015 Journal Entry #537 for:	\$ 37,908.56
FY 2014/2015 Warrant # 15for:	\$347,857.66

Total: \$418,358.74

B. Department Reports

Councilor Harvey moved, Councilor Copeland seconded; to approve the Department Reports as submitted. Vote 5-0 in favor.

C. School Board Update

None

8. Old Business

None

9. New Business

A. Legal Review Recommendations

Town Attorney, Tom Russell's legal review of a letter dated May 13, 2015; which raises two issues concerning the Fire Station Project, is attached to this document for record purposes.

B. Mobile Home Park License Renewals

Councilor Amoroso moved, Councilor Copeland seconded; to approve the annual permit to operate a Mobile Home Park for Pine Cone Mobile Home Park, Cedar Haven Mobile Home Park and Holden Mobile Home Park. Vote 5-0 in favor.

C. Appointment of Town Officials

Councilor McLeod moved, Councilor Amoroso seconded; to approve the list of appointments as submitted. Vote 5-0 in favor. The list of appointees is attached to this document for record purposes.

D. Town Manager Authorization (Annual Delegated Authority by Council)

Councilor Harvey moved, Councilor Copeland seconded; to authorize the Town Manager to act on behalf of the Town Council for the approval and execution of the following documents:

Utility Pole permits, Business Licenses, Sign Permits, Road Opening Permits, New Septic System Variances, Holding Tank Applications, Urban/Rural Initiative Program Funding, and Off Site Liquor Permits. Vote 5-0 in favor.

E. Discuss FY 2015/2016 Road Paving

Councilor McLeod moved, Council Harvey seconded; to table this agenda item and schedule a Special Council Meeting for Thursday, June 18, 2015 at 5:00 p.m. at the Holden Municipal Building. Vote 5-0 in favor.

10. Other Business (By Unanimous Consent)

Councilor Harvey asked to discuss the sale of town owned property under Executive Session. Unanimous consent was given to go into Executive Session after Public Comment. Vote 5-0 in favor.

11. Public Comment

Chris Beaumont thanked Robert Harvey for his time as Council Chairperson and congratulated Rod Black on his re-election to the Town Council.

Executive Session

Councilor Harvey moved, Councilor McLeod seconded; to enter into Executive Session to discuss the sale of town owned property pursuant to 1 M.R.S.A 405 (6) (C) at (7:10 p.m.). Vote 5-0 in favor

Councilor Harvey moved, Councilor McLeod seconded; to leave Executive Session (7:25 p.m.). Vote 5-0 in favor.

Councilor Harvey moved, Councilor Amoroso seconded; to approve the sale of Lots # 1 and 2 in DeBeck Park to Maine Horse and Rider for the amount of \$80,000 pending legal review of the Purchase and Sales Agreement. Vote 5-0 in favor.

12. Adjournment

Councilor Copeland moved, Councilor McLeod seconded; to adjourn at 7:49 p.m. Vote 5-0 in favor.

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Respectfully Submitted,

Wanda Libbey
Wanda Libbey
Town Clerk

Date Approved: 7-20-2015

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MEMORANDUM

Date: June 15, 2015
To: Ben Breadmore
From: Tom Russell
Re: Fire Station Project

You provided me with a copy of a letter dated May 13, 2015 from Kerry Zimmerman, which letter raises two issues concerning the Fire Station Project. It is my understanding that the Town Council contemplated borrowing funds for the Project, so the Town retained the services of Eaton Peabody as bond counsel. Daniel Pittman of Eaton Peabody prepared all documents concerning the issuance of a general obligation bond in the amount of \$405,531 to Camden National Bank, and the Issuance Resolutions stated that the funds were for the financing of the construction of an addition to the firehouse. Mr. Pittman provided the Bank with an opinion letter that the Bond was a valid and binding general obligation of the Town of Holden. In addition to using the bond proceeds for the Fire Station Project, the Town Council also voted to use \$12,132 from the building reserve account for the Project, and voted to use funds from the economic development reserve account for the purchase of a bay exhaust system for an amount not to exceed \$40,000. It is my understanding from Sherry Murray that the actual amount used from that reserve account ended up being \$39,100. The opinion letter from Daniel Pittman does not address the use of reserve funds, and Mr. Pittman confirmed to me that he was not involved with that part of the financing for the Project.

Kerry Zimmerman's letter alleges that the actions of the Town Council on October 20, 2014 violated Sections 2.13(15) and 3.02(1)(e) of the Town Charter, and 30-A M.R.S. § 5802(2), the statute law dealing with municipal reserve accounts.

APPROPRIATION ISSUE

Section 2.13 of the Town Charter enumerates the powers of the Town Council, and Section 3.02 enumerates the powers of the Town Meeting. Pursuant to Section 2.13(13), the Town Council is authorized to exercise all other powers of the Town of Holden that are not specifically reserved to the Town Meeting. In other words, the residual legislative authority of

the Town is vested in the Town Council, and the Town Meeting only has the authority expressly reserved to it under Section 3.02.

Section 2.13(15) provides that the “Town Council may approve by motion an appropriation up to and including \$250,000.00 for a single capital improvement project.” However, Section 3.02(1)(e) provides as follows: “The Town Council shall submit any motion appropriating more than \$250,000.00 for a single capital improvement... to the voters at a regular or special Town Meeting.” (Note: Omitted language relates to bonds or notes for capital improvements in excess of 2% of the most recent State Valuation amount, which is inapplicable to the First Station Project).

Section 2.13(15) and the pertinent provision of Section 3.01(1)(e) do not deal with the borrowing of funds for a single capital improvement project, they deal with the appropriation of funds for such a project. Although it is not an uncommon assumption for municipal officials to believe that the term “appropriation” means funds raised through property taxation, in actuality it is more than that. In the municipal context, the word “appropriation” is generally defined as a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose. The \$405,531 received from the general obligation bond constituted public funds, and it is my opinion that the vote to use those funds for the Fire Department Project constituted an appropriation of those funds for a single capital improvement project, and should have been submitted to the voters under Section 3.02(1)(e).

At this point in time, the Town Council could call a special town meeting asking the voters to ratify and approve the appropriation of the \$405,531 to the Fire Department Project. The problem is, if the voters do not pass the article, there is really no remedy for the situation. The Town Council legally borrowed the money from Camden National Bank, and is obligated to pay off the bond. The funds have been used to pay the contractor to construct the addition to the Fire Station. At this point in time, it is impossible to unwind the Fire Station Project.

RESERVE FUND ISSUE

Section 2.13(14) of the Town Charter authorizes the Town Council to establish reserve accounts. Section 3.02 (1)(f) requires approval from a Town Meeting of any expenditures from a reserve account exceeding 2% in the aggregate of the most recent State Valuation. By my calculation, two percent (2%) of the 2014 State Valuation constitutes \$5,565,301.12 ($\$278,265,056 \times .02 = \$5,565,301.12$), so the aggregate amount of the expenditures from reserve accounts approved by the Town Council did not need approval at Town Meeting. Section 3.02(1)(g) of the Charter requires Town Meeting approval for the transfer from one reserve account to another reserve account. Article 11 on the 2014 Annual Town Meeting Warrant, which authorized the Town Council to make transfers and disbursements from a number of funds (including Reserve Funds), was approved by the voters at the Town Meeting. Therefore, the actions of the Town Council with respect to the reserve fund accounts were duly authorized in accordance with the Town Charter.

The Kerry Zimmerman letter, however, alleges that the transfer from the economic development reserve account was in violation of 30-A M.R.S. §5802(2). Section 5801 authorizes the establishment of a reserve fund with one or more accounts, and Section 2.13(14) of the Town Charter delegates that authority to the Town Council. Section 5802 provides that the municipal officers are trustees of the municipal reserve fund, and Section 5802(2) provides that an expenditure from any account of the reserve fund may be made only for the specific purpose for which the account was established. It is my understanding that when the economic development reserve account was established at a Special Town Meeting on October 6, 1999, it authorized a reserve account for the proceeds from the sale of lots in the DeBeck Business Park for the purpose of economic development. The term “economic development” was defined as “including, but not limited to, the construction of infrastructure improvements in the DeBeck Business Park, extension of waterlines, and advertising and promoting development in the Town.” In my opinion, even with the “but not limited to” language, it would be a stretch to argue that the Fire Station Project constitutes “economic development.”

Even if one assumes that the funds from the economic development reserve account were not used for the purpose for which the account was established, the question becomes whether the Town has home rule authority to deviate from the requirements of Section 5802, and to authorize the Town Meeting to approve the transfer from one reserve account to another reserve account.

Municipalities are political subdivisions of the State of Maine. Prior to November 1, 1969, municipalities could only exercise the authority and powers granted by the State Legislature. Effective November 1, 1969, Maine became a so-called “home rule” state, when the following amendment to the Maine Constitution became effective:

Article VII, Part Second, §1

“Section 1. The inhabitants of any municipality shall have the power to alter and amend their charter on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act.”

The Legislature adopted statutory provisions for the procedure to adopt, revise or amend town charters, which statute is now codified as 30-A M.R.S. §§ 2101-2109. The Legislature also broadened the scope of home rule authority by a statute that is now codified at 30-A M.R.S. §§ 3001-3014, but on its face that statute deals with municipal home rule authority to adopt ordinances or bylaws, and it does not deal with charter provisions.

The essential question is whether Section 3.02(1)(g), which authorizes the transfer of funds from one reserve account to another, is within the Town of Holden’s home rule authority.

My research only found two cases in which the Maine Supreme Judicial Court (“Law Court”) dealt with challenges to Charter provisions on the basis of home rule. In *School Committee of the Town of Winslow v. Town of Winslow*, 404 A.2d 988 (1979), the School Committee challenged a charter amendment that (1) reduced the term of Committee members

from 3 years to 2 years and (2) changed the election of members from “at large” to “by district”. The Law Court held that education is primarily a state function, and that therefore the two amendments at issue were invalid because they did not involve a matter local and municipal in character.

However, in a subsequent case, *School Committee of Town of York v. Town of York*, 626 A.2d 935 (Me. 1993), the Law Court had another occasion to address charter provisions dealing with schools. The York Town Charter was enacted in 1991, and vested in a Budget Committee the exclusive authority to determine the amount of each warrant article (both municipal and school budgets) to be presented to the voters in an annual budget referendum. The School Committee brought a lawsuit challenging the budget provisions, and the Superior Court held them to be invalid. The Law Court, however, held that the challenged provisions were within the Town’s home rule authority pursuant to 30-A M.R.S. § 3001. The Law Court acknowledged that the language of the constitutional home rule authority relates to charters and the language of the statutory home rule authority relates to ordinances or bylaws, but held that the statutory home rule authority enacted by the Legislature augments the constitutional home rule authority, and that the Legislature intended to convey “a plenary grant of the state’s police powers to municipalities, subject only to express or implied limitations.” *Id.* at 938. Therefore, the Law Court upheld the York Charter provisions, even though they dealt with education.

Therefore, Title 30-A M.R.S. § 3001 also applies to the Charter provisions dealing with the reserve fund accounts. Section 3001 grants a municipality the authority “to exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication...” Section 3001 goes on to provide that it is to be liberally construed to effect its purposes, and creates a rebuttable presumption that a municipality’s exercise of its home rule authority is valid. In order for a municipal home rule action to be preempted by clear implication, the action would have to be found to frustrate the purpose of any state law.

I reviewed the statutory provisions relating to reserve funds, and found no express limitation on a municipality’s home rule authority with respect to that matter. Also, I found no case law on the issue. I did find a Maine Municipal Association “Legal Note” from the 1995 *Maine Townsman*. A municipality asked the MMA Legal Department whether it could temporarily borrow funds from its equipment reserve accounts, rather than borrow via tax anticipation notes. The MMA attorney advised the municipality that it would not be appropriate to borrow the funds because of the purpose requirement, but it also advised that such borrowing would be legal if a municipal home rule ordinance or Charter provision expressly authorized it. Given the Law Court’s holding in *School Committee of the Town of York*, the broad home rule language of 30-A M.R.S. § 3001, and the rules of construction set forth in § 3001, I believe that it is reasonable to assume that the Charter language in Section 302(1)(g) is valid under the Town’s home rule authority. Accordingly, it is my opinion that the Town Council legally acted in accordance with the Town Charter provisions and the authority delegated to the Town Council by the 2014 Annual Town Meeting. If someone brings a legal challenge to the Town Council’s action, the Town Council could always resolve the challenge by transferring the \$39,100 from the building reserve account to the economic development reserve account, rather than spend money to defend the challenge.