

TOWN OF TOPSHAM  
BOARD OF SELECTMEN MEETING  
AUGUST 15, 2013, 7:00 P.M.

---

MEMBERS PRESENT: Donald Russell  
Marie Brilliant  
David Douglass  
Ronald Riendeau  
James Trusiani

MEMBERS ABSENT: All present

STAFF PRESENT: Town Manager, Cornell Knight

A meeting of the Topsham Board of Selectmen was held on Thursday, August 15, 2013 at the Municipal Building at 100 Main Street, Topsham, Maine.

**CALL TO ORDER AND PLEDGE OF ALLEGIANCE/ROLL CALL**

Chairman Russell called the regular meeting to order at 7:00 p.m. All present were invited to stand and recite the Pledge of Allegiance to the Flag. The recording secretary took the roll call and noted that all Selectmen were present.

**TOWN MANAGER'S REPORT**

The Town Manager's Report included:

- The CAP Agency did receive funding from the State to continue their Headstart Program at the Pejepscot School. That lease continues with the Town until June, 2014.
- The Finance Manager has closed the books on the 2013 fiscal year and although we were a little short on revenue collections, the unexpended appropriations was over \$400,000 to the good, so we continue to be in good financial condition.
- The Bureau of Parks and Land has a grant funding program in the fall. However, there is stipulation that first the Town must request a site visit and then you may be asked to submit a grant application. The deadline to request a site visit is August 16, 2013.

Mr. Douglass expressed concern with vehicles parked in front of the former fire station and staying there 24/7. It appears as if the area has become used as a parking lot with at least 3 vehicles parked there without license plates. The Town Manager will have this matter investigated.

**BOARD AND COMMITTEE REPORTS AND UPDATES**

**Update TDI/ECD** - John Shattuck, Topsham Economic and Development, Inc. Director gave a report on happenings in TDI and ECD. TDI held its annual strategic planning meeting last Friday and plan to come back before the Board of Selectmen with an annual report in early fall.

A thank you was extended to those who assisted with work on the recent TIF applications. All documents are posted on the Town's website and a Public Hearing is scheduled to be held on Thursday, August 22nd.

The official opening of Panera Bread was held on July 10th with a ribbon cutting ceremony. A letter of appreciation was read by Mr. Shattuck from the owner of Panera Bread thanking the Topsham staff for taking a sincere interest in helping with the paperwork and plans while the business was being established.

Other projects, such as the final approval for the road through the Coastal Fab entrance to Pejepsco, Mallett Woods ribbon cutting ceremony, the new NAPA building, Agren Appliance building now coming together and the medical office from Highlands on the Coastal Connector were elaborated on by Mr. Shattuck.

**PUBLIC COMMENT** - None noted.

**CORRESPONDENCE** - Chairman Russell said he received a request for 2 volunteers from the Board of Selectmen to serve on the interview panel for the SRO and reserve officer. Ms. Brilliant and Mr. Riendeau volunteered to undertake this task.

**ADJUSTMENTS TO THE AGENDA** - Denise Tepler requested that agenda item 77-13 be taken out of order as several members of the Finance Committee were present to speak to same. After a brief discussion, motion was made by Mr. Douglass, seconded by Mr. Trusiani and it was unanimously

**VOTED**

To move agenda item 77-13 to the top of agenda items for consideration.

**CONSENT CALENDAR**

**1. APPROVAL OF THE MINUTES OF THE REGULAR SELECTMEN MEETING OF AUGUST 1, 2013**

Motion was made, seconded, and it was unanimously

**VOTED**

To approve the Consent Calendar as written.

**PUBLIC HEARING** - None noted.

**UNFINISHED BUSINESS**

**77-13 CONSIDERATION AND ANY APPROPRIATE ACTION ON CUTTING \$209,000 BECAUSE OF SHORT FALL FROM MAINE REVENUE SHARING**

At the August 1, 2013 Board of Selectmen's meeting, Mr. Trusiani moved to add an item to the agenda - **Consideration and any appropriate action to reconsider his vote at the meeting on 7-18-13 on Item 62-78 on the \$209,919 State revenue shortfall**, which he voted against and then changed his vote to the affirmative. A discussion followed on

whether or not an item could be called back at a later meeting. The Rules of Order were reviewed and not seeing a particular reference to the question, Selectman Trusiani told the Board he was sure he had a right to add this item and that he would contact the Town Attorney for correct wording to bring this back to the August 15, 2013 meeting agenda.

Memos were included in the Board package of various e-mails on the subject and are filed with these minutes. Memo dated August 5, 2013 from Richard P. Flewelling, Assistant Director of the Legal Services Department of the Maine Municipal Association stated:

"Selectman James Trusiani called me about this matter last Friday.....As I told him, this issue is not governed by statutory or common law. Instead, it would be governed, if at all, by municipal ordinance or the Board's own rules of procedure.

As the Selectmen's rules do not address reconsideration of prior votes and there is no governing ordinance (an ordinance addressing reconsideration by town meeting would be inapplicable). While *Robert's Rules* do indeed address reconsideration, they would not govern unless the Selectmen have adopted them in default of a more specific local rule.

Accordingly, in my opinion, there is no applicable restriction on when or under what circumstances the Selectmen may reconsider a prior vote (except where third party rights have already vested). Thus, **the Board is free to permit reconsideration whenever a majority of members, in their discretion, choose to allow it.....**

Best Regards. Richard P. Flewelling, Assistant Director, Legal Services Department, Maine Municipal Association"

Memo was also included for review from Town Attorney, Mary E. Costigan which states:

"I agree with Dick's conclusion. However, note that although the Board is free to vote on an appropriate procedure for reconsideration, that procedure must not violate due process and must be fair.....\* Please let me know if you have any further questions. Mary E. Costigan, Attorney with Bernstein Shur

....\*reference #36, Roberts Rules of Order and Procedure for Topsham Board of Municipal Officers states: Procedure in the Absence of Rule: In the absence of rule to govern a point or procedure, it shall be determined by the Board."

Mr. Trusiani began discussion on this item and said he knew he was wrong the very next day when he changed his vote to the affirmative and that the town could not afford to lose its assistant assessor. He asked to hold a workshop to discuss where other cuts could be made to make up for the lost revenue.

A lengthy discussion followed on the timing of holding another workshop and the need to get tax bills out on time. Finance Committee Member Gail Eaton said what was decided was the best both the Board of Selectmen and Finance Committee could do at this point in time and urged the Board to stay with what was decided and agreed upon at the public meeting. Another Finance Committee Member, Phyllis Ponziani, questioned the Board as to why this particular cut was such a tough decision.

Motion was made by Mr. Trusiani, and seconded by Mr. Riendeau, to reconsider the decision made on the \$209,919 State Revenue Shortfall. More discussion followed and vote was called. **The motion failed by a vote of 2 in favor and 3 opposed.** Voting in favor were Riendeau and Trusiani, against: Douglass, Brilliant and Russell.

## NEW BUSINESS

### 71-13 CONSIDERATION AND ANY APPROPRIATE ACTION ON THE REQUEST FROM MCOG FOR A LETTER OF ENDORSEMENT ON THE ROUTE 24 CORRIDOR MANAGEMENT PLAN

The Town Planner presented history on the Route 24 Corridor Management Plan, a copy of which was included in the Board package along with the following "Letter of Endorsement." The State DOT is requesting that the letter be signed by officials from the Towns of Harpswell, Brunswick, Topsham, Bowdoinham and Richmond.

"Route 24 Corridor Management Plan  
Letter of Endorsement

We support the findings and recommendations contained in the Route 24 Corridor Plan in order to:

1. Ensure safe travel for all corridor users, including vehicle drivers, pedestrians and bicyclists;
2. Maintain the capacity of the corridor;
3. Provide coordinated signage and marketing;
4. Address storm surge and future inundation, particularly with regard to emergency routes; and
5. Re-route Route 24 out of the downtowns of Brunswick and Topsham to remedy high traffic impacts, with consideration for Business 24 designation of the existing route in those towns.

We will work with Maine DOT, the Midcoast Council of Governments and each other to support the plan's implementation as funding is available.

Town of Harpswell  
Town of Brunswick  
Town of Topsham  
Town of Bowdoinham  
Town of Richmond"

It was noted that Route 24 is a Priority 4 road, which is low on the priority list, and it is anticipated that the project will evolve over a number of years until funds are identified by the State.

Motion was made by Mr. Douglass, seconded by Mr. Riendeau and it was

**VOTED**

To endorse the letter regarding Route 24 Corridor Management Plan for the Town of Topsham. (The voted was 4 in favor and 1 opposed (Trusiani).

**72-13 CONSIDERATION AND ANY APPROPRIATE ACTION ON A PROPOSED ORDINANCE ENTITLED "AN ORDINANCE TO AMEND THE TOPSHAM ZONING ORDINANCE REGARDING LIGHT MANUFACTURING USES"**

The Planning Director, Richard Roedner, told the Board that the Planning Board is recommending that the Topsham Zoning Ordinance be amended by clarifying the definition of light Manufacturing and by amending the Land Use Table to allow Light Manufacturing in the BP2 zone (Annex Property) with a prohibition on outside storage of materials and products.

Following discussion, motion was made by Mr. Douglass, seconded by Mr. Riendeau and it was unanimously

**VOTED**

To forward the ordinance amendment to be placed on the warrant for the next Special Town Meeting with a recommendation from the Planning Board of "Ought to pass."

**73-13 CONSIDERATION AND ANY APPROPRIATE ACTION ON THE INSTALLATION OF A CROSSWALK AT PARK DRIVE AND TOPSHAM FAIR MALL ROAD TO INCLUDE A PEDESTRIAN SIGNAL**

At last month's Board of Selectmen meeting there was a discussion on 4 crosswalk requests and a request for a blinking light at the end of Mallett Drive and Monument Place intersection. Installation of the blinking light was approved, but no action was taken regarding the crosswalks until the balance in the Traffic Impact Fee account was known.

It is now known that the balance in the account is \$20,427.00. It was noted that, if the crosswalks were approved, the pedestrian signal and the flashing light at Mallett Drive could be put out to bid together.

Public Works Director, Dennis Cox spoke to this item and following discussion, motion was made by Mr. Douglass, seconded by Mr. Riendeau, and it was unanimously

**VOTED**

To approve the installation of a crosswalk at Park Drive and the Topsham Fair Mall Road.

Motion was made by Mr. Douglass, seconded by Mr. Riendeau, and it was unanimously

**VOTED**

To bundle the bids for the blinking light at Mallett Drive and Monument Place with the pedestrian cross light at Topsham Fair Mall Road.

**74-13 CONSIDERATION AND ANY APPROPRIATE ACTION ON THE FORESIDE ROAD DRAINAGE PROJECT**

Selectman Trusiani requested that this item be included on the agenda and listed 5 areas of concern, including:

1. Cost of the project.
2. Which budget year will be paying for it?
3. What are the safety concerns?
4. Why are high-priced workers flagging?
5. Why is this not a Capital Project?

Mr. Trusiani said that citizens are asking questions that he doesn't have answers for and the reason this is on the agenda.

Public Works Director, Dennis Cox, distributed a six page report including responses to Mr. Trusiani's concerns. The report is filed with these minutes.

A discussion followed Mr. Cox's presentation and concern was expressed that people have witnessed the public safety crew working in deep trenches that are not lined with a trench box, although a trench box was noted sitting on site. A couple selectmen expressed liability concerns that the selectmen are ultimately responsible for the safety of employees and any other issues within the Town and asked the public works director if there was a policy in place regarding such things as trench digging and the use of trench boxes. Mr. Cox responded that was such a policy and he agreed to review same to be sure his department is in compliance with safety issues and will update same if necessary.

Complaint was made that the project was taking too long to complete (8 weeks to date and not yet done) and question was asked of what regular duties were left by the wayside while the crew was working on the project in the past 8 weeks. Mr. Cox assured the Board that some of his crew had to leave the project from time to time to get work such as mowing and other summer jobs completed and was somewhat the reason the project was taking longer to complete. Mr. Cox said the only work that didn't get done was getting ready for paving, but that all paving was put on hold.

There was no action to be taken on this item.

**75-13 CONSIDERATION AND ANY APPROPRIATE ACTION ON THE FRENCH FAMILY OFFER TO DONATE LAND TO THE TOWN OF TOPSHAM**

Letter is in file from Lynn P. Young, the Executrix for the Estate of Kenneth B. French. Mrs. Wetonah L. French passed away in 2008 and Kenneth B. French passed away in August of 2012. Children are involved in ownership but have no interest in continuing to pay taxes on the land and have no interest in retaining it. Ms. Young has asked The Town to forward her any forms necessary to turn this property over to the Town of Topsham and to include any expenses incurred with doing so.

Town Manager Knight said he asked the Topsham Conservation Commission (TCC) to review the offer to receive the 21 acre parcel on the Muddy River (Tax Map R11, Lot 11) and make a recommendation to the Town. Letter dated August 7, 2013 from Gary W. Fogg, the Conservation Commission Chair is also included in the file. The letter states that the four members of the TCC have evaluated the land donation offer and recommend that the Town accept the parcel and either transfer ownership to the Brunswick-Topsham Land Trust (BTLT) for permanent conservation, or retain ownership and develop a permanent conservation easement on the parcel with BTLT as the holder of the easement.

Chris Dwinal, a member of the Commission, told the Board the land was in a wet area, consisted mostly of marsh grass, and was not developable. The land is landlocked. Mr. Dwinal reiterated the Commission's recommendation for the Town to accept the land and then transfer ownership to the Brunswick-Topsham Land Trust.

Mr. Douglass asked why it wouldn't be better to transfer the land to the Department of Inland Fisheries, who also own abutting land. Both Mr. Langelo and Mr. Fogg (also members of the Commission) told the Board it would take 5 to 10 years for the Dept. of Inland Fisheries to accept the land, that they actual work now with the Land Trust, and with the Land Trust owning the land, it would be more accessible to citizens.

Motion was made by Mr. Trusiani, seconded by Ms. Brilliant, and it was unanimously

**VOTED**

That the Town of Topsham accept the Land Donation from the Estate of Kenneth French and to authorize staff to proceed with discussing the future of same with the Brunswick-Topsham Land Trust.

**76-13 CONSIDERATION AND ANY APPROPRIATE ACTION ON THE SCHEDULE OF PUBLIC HEARINGS AND MEETINGS FOR THE SEPTEMBER 25, 2013 TOWN MEETING**

The Town Manager said staff has been working on items such as the Neighborhood Revitalization Plan and Light Manufacturing ordinance changes and have created a chart (enclosed in the Board package) scheduling a Special Town Meeting for September 25, 2013. The 4 items to be considered at the town meeting include:

1. Affordable Housing TIF; 2. Main Street TIF; 3. Neighborhood Revitalization Plan and 4. Light manufacturing zoning changes at the former Annex property

Mr. Douglass expressed concern that the process is that items come to the Board of Selectmen, and they approve if a public meeting will be held and then move to a town meeting. He said it appeared that the items are going directly to a public hearing without coming before the Board first. The Town Manager responded that both the public hearing and the Board deciding what they want to include on the warrant could be all done at the August 22nd meeting. Again, Mr. Douglass expressed concern that the document is already out before coming before the Board of Selectmen for approval.

Mr. Trusiani asked when the Board of Selectmen voted to hold the August 22nd Public Hearing which has already been advertised. He said he never voted for the public hearing. Mr. Douglass added that these are some of the same issues we have been talking about for months. He said the Board of Selectmen does business on the 1st and 3rd Thursdays of the month and this has been ongoing since June. He said his wife told him about an upcoming meeting he was not aware of that she read in the paper and this is not how we do business. He said he wants to support what was talked about in June - the overview of assisting the affordable housing project. He said he wants to support that but to support it how Topsham does its business, not changing the way we do it to make things happen. Mr. Douglass asked where the list of proposed projects came from and expressed concern with the word "will" rather than "may" do certain projects.

John Shattuck explained the process, as in other previous TIFs, that we are not making a commitment, but simply listing suggested projects that will need to come before Town Meeting for approval and that the list is simply a menu of what could be done. Mr. Trusiani said he was angry that the Board was not included in working up the list and that the correct was to come to the Board first.

The Board made several suggestions of changing the dates of the scheduled meetings, but because of time constraints, agreed that the schedule would best be left as presented.

Motion was made by Mr. Douglass, seconded by Mr. Trusiani, and it was unanimously

#### **VOTED**

To move to a Public Hearing on August 22, 2013 the 4 items listed on the schedule, along with expecting a presentation on each item, as well as the possibility of changing wording of "will" to "may."

#### **78-13 CONSIDERATION AND ANY APPROPRIATE ACTION ON THE SCHEDULING OF UPDATES FROM TOWN BOARD/COMMITTEES**

The Board of Selectmen is seeking applications for possible openings on the following board/committees. Contact the Town Manager's office for an application at 725-5821 or it may be downloaded from the Town's website at [www.topshammaine.com](http://www.topshammaine.com).

<u>NAME OF BOARD/COMMITTEE</u>	<u>NUMBER OF OPENINGS</u>
Board of Appeals	2
Finance Committee	2
Historic District	1
History Committee	2
Topsham Development, Inc.	4
Topsham Housing Authority	1
Tree Committee	2
Comprehensive Plan Implementation Committee	2
Planning Board	1
Topsham Town Meeting Committee	Up to 5

Mr. Riendeau told the Board he had received a call from Mr. Rensenbrink suggesting that the name of the "Government Improvement Committee" be changed to "The Topsham Town Meeting Committee." The Board was in agreement that the new name would better identify the purpose of the committee

Motion was made by Mr. Russell, seconded by Mr. Riendeau, and it was unanimously

**VOTED**

To change the name of the Government Improvement Committee to the Topsham Town Meeting Committee.

Selectman Douglass was charged, at the last Board of Selectman's Meeting, to develop a schedule for Committee Updates to be made to the Board of Selectman.

The following schedule was included in the Board package for consideration:

Tree Committee	January
CPIC (Ad-Hoc)	February
TDI	March
Historic District Commission	April
History Committee	June
Sewer District Trustees	July
Water District Trustees	August
Topsham Housing Authority	September
Conservation Committee	October
Topsham Town Meeting Committee (Ad-Hoc)	November
250th Anniversary (Ad-Hoc)	Quarterly (September 2013)
Route 196 Corridor Study Committee (Ad-Hoc)	Quarterly (October 2013)
Lower Village Waterfront Park (Ad-Hoc)	Quarterly (November 2013)

Not Requested: Planning Board, Board of Assessment Review, Finance Committee and Board of Appeals

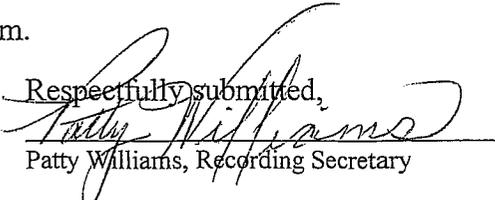
Motion was made by Mr. Douglass, seconded by Mr. Riendeau, and it was unanimously

**VOTED**

To approve the Committee Update Schedule as presented with the name of the Government Improvement Committee changed to the Topsham Town Meeting Committee with the expectation that the work be done by committee members.

With no further business to discuss, motion was made, seconded, and it was unanimously,

**VOTED** To adjourn the meeting at 9:35 p.m.

Respectfully submitted,  
  
 Patty Williams, Recording Secretary