

**6:30PM Board of Selectmen Meeting
Virtual Meeting (TV Ch. 3)
December 17, 2020**

Pledge of Allegiance –

Roll Call of Board Members –

Town Manager's Report –

Board and Committee Reports and Updates-

- Update TDI/ECD- John Shattuck, Topsham Economic and Community Development, Inc. Director

Correspondence – If you have any comments/questions on an agenda topic, email them to info@topshammaine.com by Tuesday, the week of meeting. Please include your full name and address in the email. Emails will be reviewed and addressed during the meeting which will be televised on channel 3.

Adjustments to the Agenda – At this time we will be taking phone calls for any comments/question you have on this agenda at 373-5090. We will be asking for you name, address and brief comment/question.

Consent Calendar –

1. Approval of the minutes of the Regular Selectmen meeting December 3, 2020.
2. Approval of the re-appointment of Linda Dumont as Registra of Voters for the Town of Topsham for two years.

Public Hearing –

Unfinished Business –

Old Business –

New Business –

20-93- Consideration and any appropriate action on the final report and recommendations of the Government Review Committee.

20-94- Consideration and any appropriate action on the memorandum and recommendations of the Topsham Development, Inc. Board of Directors regarding possible by-laws revisions.

Executive Session-

20-95- Consideration and any appropriate action to enter into Executive Session pursuant to 1 M.R.S.A. § 405 (6) (C) to discuss acquisition of real property or economic development.

Any public member desiring to address the Board shall be recognized by the Chair, shall state name and address for the record, and shall limit remarks to the question under discussion. All remarks and questions addressed to the administration of Town shall be addressed to the Town Manager or the Board of Municipal Officers through the Chair and not to any municipal town employee. No person other than members of the Board and the person having the floor shall enter into any discussion either directly or through a member of the Board without the permission of the presiding officer.

Public members attending Board Meetings also shall observe the same rules of propriety, decorum, and good conduct applicable to the members of the Board. Any person making personal impertinent and slanderous remarks, or who becomes boisterous while addressing the Board or those attending the Board meeting shall be removed from the room if so directed by the presiding officer. Aggravated cases shall be prosecuted on appropriate complaint signed by the presiding officer. In case the presiding officer should fail to act, any member of the Board may move to require the Chair to act to enforce the rules, and the affirmative vote of the Board shall require the presiding officer to act. 05/29/2003

Board of Selectmen Meeting

For the date of: 12/17/2020

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- Old Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number 1

(If this is unfinished business, please remember to research and enter the original agenda number above. For regular agenda items, the secretary will assign a number.)

Brief Title of consent or Agenda Item: Approval of the minutes of the Regular Selectmen meeting December 3, 2020.

Brief Description of Consent or Agenda Item: see attached

Submitted by Derek Scrapchansky, Town Manager

Date: 12-03-2020

MINUTES
TOWN OF TOPSHAM
BOARD OF SELECTMEN MEETING – DECEMBER 3, 2020
6:00 P.M. INTERVIEWS FOR BOARDS AND COMMITTEES
6:30 P.M. REGULAR SELECTMEN’S MEETING
HELD VIA ZOOM FROM INDIVIDUAL RESIDENCES

MEMBERS PRESENT: David Douglass
Marie Brilliant
Ruth Lyons
Matt Nixon
Roland Tufts

MEMBER(S) ABSENT: All present

STAFF PRESENT: Derek Scrapchansky, Town Manager; Mark Waltz, Assistant Town Manager; Rod Melanson, Director of Planning, Development and Codes; Andrew Deci, Assistant Town Planner; Dennis Cox, Public Works Director; Pam LeDuc, Parks and Recreation Director.

A meeting of the Topsham Board of Selectmen was held on Thursday, December 3, 2020, with individuals joining the meeting from their residences via Zoom. Chairman Douglass called the regular meeting to order at 6:30 p.m. (The Board actually met at 6:00 p.m. to hold interviews for boards and committee vacancies.)

PLEDGE OF ALLEGIANCE/ROLL CALL

Everyone was 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

Good Evening,

To better serve our residents and help the environment, the transfer station is going to be a drop off location for PaintCare (the program ensures paint is disposed of in an environmentally sound manner). Once the program starts, residents can drop off unused oil and latex paint with an attendant at the transfer station. The paint will be stored in a special pallet and when a pallet is full, PaintCare will come haul it off, free of charge.

We would like to remind you to please plan ahead when making trips to the Solid Waste Facility. Due to social distancing requirements and the increased waste disposal during the holiday period,

residents should expect wait times up to 30 minutes on weekends. The Solid Waste Director recommends presorting waste and recycling prior to entering the facility and would like to remind residents that Christmas wrapping paper is no longer recyclable.

In August, the Town was awarded a Keep Maine Healthy COVID19 Grant. The Town captured 99% of the Grant totaling \$249,775. The Grant reimbursed the Town for COVID19 related personnel costs, facility modifications/repairs, supplies/PPE/cleaning/sanitization, and a website redesign/communication upgrade.

Topsham was recognized by the United Way of MidCoast Maine for the level of contribution from our staff. A big thanks to our staff for helping our community!

Santa is coming to Topsham on Saturday, December 12th. He will be visiting neighborhoods and will be escorted by our Fire, Police, Parks and Recreation Departments. The map of his route is available at topshamparksrec.com, as well as on the Facebook Page for the Parks & Recreation Department. (Snow date is scheduled for December 19th).

Santa's Switchboard is now available for Topsham Kindergarten and 1st Graders. Parents can register their child for a call from Santa or Mrs. Claus by following the online link located on the Parks and Recreation Department Website at topshamparksrec.com

I would like to thank Lois Skillings and Dr. Chris Bowe from MidCoast Hospital who will be providing a COVID19 update tonight.

Thank you and have a good evening.

Derek Scrapchansky
Town Manager

BOARD AND COMMITTEE REPORTS AND UPDATES

Update From Mid Coast Hospital – Lois Skillings, President and CEO of Mid Coast-Parkview Health and Christopher Bowe, MD, Vice President, Medical Administrator and Chief Medical Officer presented a COVID19 update via a Power Point Presentation, which was followed by a question and answer session.

Update From Comprehensive Plan Implementation Committee – Susan Rae Reeves presented the initial Work Plan developed by the Town's Planning Department and the Committee. She said the Board of Selectmen, as the elected leaders of the Town, are key partners in implementing the 2019 Plan and the Committee looks forward to working with the Board and Town Staff.

CORRESPONDENCE: (The meeting agenda included the following) If you have any comments/questions on an agenda topic, email them to info@topshammaine.com by Tuesday, the week of the meeting. Please include your full name and address in the email. Emails will be reviewed and addressed during the meeting which will be televised on Channel 3.

ADJUSTMENTS TO THE AGENDA – At this time, phone calls will be taken for any comments/question's individuals may have on this agenda. Number to call is 373-5090. Please state your name, address and brief comment/question.

A call was received from Jenna Godo, who said she has comments to make on an agenda item and will call back when the item is heard from the agenda.

CONSENT CALENDAR

APPROVAL OF THE MINUTES OF THE REGULAR SELECTMEN'S MEETING OF NOVEMBER 19, 2020

Motion was made by Chairman Douglass, seconded by Selectman Tufts, and it was unanimously

VOTED

To approve the minutes of the regular Selectmen's Meeting of November 19, 2020, as written.

PUBLIC HEARING

20-88 CONSIDERATION AND ANY APPROPRIATE ACTION ON APPROVING A MARIJUANA BUSINESS LICENSE APPLICATION FOR CULTIVATION TIER 2 AND PRODUCT MANUFACTURING LOCATED AT 12 CENTER PARK ROAD, TAX MAP R05-056-2 SUBMITTED BY ICE WATER LLC

Chairman Douglass explained the procedure of the hearing and declared the Public Hearing open. Roderick Wintle spoke to the application saying Ice Water LLC is a small organization looking to get involved in the cultivation of marijuana. He said Randall Wintle and his wife will operate the business. There is no hazardous material involved.

Rod Melanson, Director of Planning, Development and Codes, told the Board that the application was found to be in order and that the applicant must get a license from the Town and then move forward to be licensed by the State.

Chairman Douglass asked for comments from members of the public. With no one wishing to speak, the Public Hearing was declared closed. Discussion was held between Board Members. Question arose about the hours of operation which were listed at two different times on the application. The applicant said the error will be corrected. The Board was in agreement that the application met proper guidelines.

Motion was made by Chairman Douglass To approve the application of Ice Water LLC Marijuana Cultivation Facility Tier 2 License and Marijuana Product Manufacturing License, based upon the Findings of Fact as listed in the memo from Town Clerk Linda Dumont, dated October 29, 2020 with the following Conditions of Approval:

1. The applicant/facility may not operate as a State licensed cultivation facility and/or product manufacturing facility until such time State marijuana licenses are approved, delivered, and reviewed by the Town Clerk's Office.
2. No changes to this approved license are allowed to occur. The applicant must return to the Board of Selectmen for any license renewal or amendments.
3. The approved operating hours on the Town Application and the State Application must match.

The motion was seconded by Selectman Tufts. Vote was called and the motion passed unanimously.

20-89 CONSIDERATION AND ANY APPROPRIATE ACTION ON APPROVING A MARIJUANA BUSINESS LICENSE APPLICATION FOR A REGISTERED CAREGIVER RETAIL STORE AND PRODUCT MANUFACTURING LOCATED AT 55 TOPSHAM FAIR MALL ROAD, TAX MAP R05B, LOT 009-B SUBMITTED BY 4207 LLC (Highbrow) AND Highbrow Edibles

Chairman Douglass declared the Public Hearing open.

Richelle Stacy, Business Manager for Highbrow, spoke to the application. Rod Melanson, Director of Planning, Development and Codes, presented background saying this is an established business now located at 49 Topsham Fair Mall Road and operating with a currently approved license. Topsham's licensing code states that in order to transfer this license to a new location, the business needs to be reviewed and authorized by the Board of Selectmen.

The applicant wishes to move the current business, with an additional request for a license for product manufacturing to the former Ruby Tuesday's building. It was noted that the site has an existing permitted Site Plan and there are no proposed amendments to the approved plan.

Memo in file to the Town Manager from the Town Clerk dated October 28, 2020 states the application was found to be complete. Staff comments included:

Caregiver Retail Store – 4207 LLC

- Charles Doherty is the sole owner of 4207 LLC
- Caregiver Retail Floor Space is 1,409 square feet
- Highbrow is an operating licensed business
- Town Staff have not received any complaints regarding the operation of this business
- The applicant is licensed through the State of Maine as a Caregiver. He is seeking to transfer his registered retail Caregiver License from the Town

- The setback of 1,000 feet from the Building Blocks Daycare facility has been professionally surveyed and meets the Town's setback standards. Staff followed up with the State Office of Marijuana Policy, and as our school definition aligns with the State's, it was determined that by State Statute, that the daycare does not meet the state definition and therefore appears to not apply in this situation.

Following a discussion between Board members, Chairman Douglass asked for comments from members of the public. One individual responded:

Jennah Godo, 2 Westwind Drive – Ms. Godo said she has been working in the field of Public Health for over 20 years and specifically in the area of substance abuse for the past 6 years. She said she has specific concerns about this license in regards to specific location and signage in a high traffic area. She said there are many unknowns and asked the Board to take a slow approach to acceptance. (Ms. Godo's total comments can be found on the Town's website for the minutes of this meeting.)

With no further comments to be heard, the Public Hearing was declared closed and the Board entered into a discussion. Some comments included:

- Hours of operation was listed at 5:00 a.m. for cleaning. It was noted Topsham's ordinance lists the hours of 8:00 a.m. to 8:00 p.m. Ms. Stacy said they like to have cleaning in the kitchen done before people working in the kitchen come in at 8:00 a.m. She said the business will make different arrangements to comply with the ordinance.
- Floor plan shows entrance from the kitchen into the coffee shop and to medical facility. Ms. Stacy said they will change the doors. The kitchen will be limited access to employees only.
- Richelle Stacy said the entrance to the coffee shop to other areas will be closed off.
- Chairman Douglass asked if Building Blocks was considered a Daycare or Preschool. Rod Melanson said Topsham has the same definition as the State and it does not meet the Preschool definition and the reason the survey was requested. Ms. Stacy said the applicant will arrange doors to meet all ordinance requirements. Selectmen Lyons said Building Blocks is a Preschool as well as a Daycare Center.
- Selectman Nixon commented on signs. Said he counted 4 in paperwork, but code will only allow one. Ms. Stacy said signs will comply with Topsham's Code.
- Selectman Tufts asked if food items being purchased can be consumed in the coffee shop. Ms. Stacy said "No."
- Selectman Lyons told the applicants that they did a good job putting their packet together. She said she is not comfortable because she feels Building Blocks is a school. She added, "This is just a personal thing, but I really hate to see a business establishment that is already a business, turn into something that is not a restaurant..."

With no further comments to be heard, motion was made by Chairman Douglass, To approve the applicant of Highbrow Edibles Marijuana Business Product Manufacturing, upon the Findings of Facts as listed in a memo from Town Clerk Linda Dumont dated October 28, 2020, with the following Conditions of Approval:

1. The applicant/facility may not operate as a State Licensed Cultivation Facility or Product Manufacturing Facility until such time State Marijuana Licenses are approved, delivered, and reviewed by the Town Clerks Office.
2. No changes to this approved license are allowed to occur. The applicant must return to the Board of Selectmen for any license renewals or amendments.
3. A complete wall off must be in place between the Coffee Shop and Caregiver Facility with no visibility.
4. There will be no entrance into the Caregiver Facility from the Coffee Shop.
5. All signage must meet Town Ordinance.
6. The facility may only operate from 8:00 a.m. to 8:00 p.m.

Vote was called and the motion passed with 4 in favor and 1 opposed (Selectman Lyons).

UNFINISHED BUSINESS – None noted.

OLD BUSINESS – None noted.

NEW BUSINESS

20-90 CONSIDERATION AND ANY APPROPRIATE ACTION ON GUIDELINES TO ALLOW ROADSIDE MEMORIALS

This item came before the Board at their September 3, 2020 meeting. The Oram Family requested guidance on how to rightfully place a roadside memorial at the place their son lost his life on November 24, 2016. (Roadside memorial is generally defined as a memorial for someone who died unexpectedly in a traffic accident at the decedent's last alive place. The accident happened on the Foreside Road.

The Board charged Assistant Town Manager, Mark Waltz, to do some research into the request, as well as to contact the Town Attorney regarding whether the authorization of a roadside memorial would open the town up to allowing additional non-commercial speech (signs) on public property.

Mr. Waltz's memo dated November 12, 2020 on his Roadside Memorial Research (filed with these minutes) was reviewed in discussion between Board Members. Town Attorney, Mary Costigan, advised that it would in fact be problematic to allow roadside memorials in public spaces as it is inconsistent with the Town's Policy on non-commercial signs in the right of way.

Brett Strout asked to see a picture of the signs the Orams would like to erect, and was shown same.

Michelle Oram said she has learned that most roadside signs are to be between 17” and 21” tall. The sign the Oram’s are proposing is 17”.

Many suggestions were discussed such as allowing a sign for a certain period of time. Concerns were expressed on how to be sure people placing the signs would take care of them. Question was posed if the cross which the Orams suggest would be a religious symbol. With so many questions on the table, motion was made by Chairman Douglass, seconded by Selectmen Lyons and it was unanimously

VOTED

To table this item for further consideration.

20-91 CONSIDERATION AND ANY APPROPRIATE ACTION FROM THE BOARD OF SELECTMEN, UPON REQUEST FROM HIGHLAND GREEN, TO DETERMINE WHETHER THE MUNICIPAL OFFICERS DEEM MOUNTAIN ROAD SUBSTANTIALLY COMPLETE

A memo was included in the Board package from the Assistant Town Manager explaining the Credit Enhancement Agreement for the Highland Greed Phase II Municipal Development District and Tax Increment Financing District require tat Mountain Road be substantially complete by December 31, 2020.

Highland Green has requested that the Board of Selectmen deem Mountain Road substantially complete, which they have the authority to do. It was noted that a copy of the most recent report from Tom Saucier, the Town’s contracted engineer, was included in the Board package. Rod Melanson has reviewed the report and is satisfied with it to the extent that the Planning Department is willing to work with Highland Green on the paperwork to propose Mountain Road for acceptance at the May Town Meeting.

The Board heard from the Public Works Director Dennis Cox, who said the work is substantially complete but plantings will need to be put in place in the spring. John Wasileski thanked the Board for their support during the process and praised others for their work, including that of Chris Belanger, Project Engineer, and Rod Melanson with the Planning Department.

Charles Katz-Leavy noted that in the 3/12/2018 TIF Agreement, three Performance Standards had to be completed before the road could be deemed complete:

1. That construction had to begin by 12/21/19
2. That Mountain Road must be completed by 12/21/20
3. That the \$400,000 contribution to the bike path had to be made

Motion was made by Chairman Douglass, seconded by Selectman Tufts, and it was unanimously

VOTED

That the Board of Selectmen deem Mountain Road to be substantially complete.

20-92 CONSIDERATION AND ANY APPROPRIATE ACTION ON THE APPOINTMENT TO THE FINANCE COMMITTEE

It was noted there are three positions open on the Finance Committee. When the Board met at 6:00 p.m. this evening, they interviewed Tom Sawyer and Kim Talbot with satisfactory results.

Motion was made by Chairman Douglass, seconded by Selectman Tufts and it was unanimously

VOTED

To appoint Tom Sawyer and Kim Talbot to positions on the Finance Committee.

EXECUTIVE SESSION - None noted.

ADJOURNMENT

Motion was made, seconded, and it was unanimously

VOTED

To adjourn the meeting at 9:50 p.m.

Respectfully submitted,

Patty Williams, Recording Secretary

Board of Selectmen Meeting

For the date of: 12/17/2020

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number 2

(If this is Unfinished Business, please remember to research and enter the original agenda number above. For Regular Agenda items, the Secretary will assign a number.)

Brief Title of consent or Agenda Item: Approval of the re-appointment of Linda Dumont as Registrar of Voters for the Town of Topsham for two years.

Brief Description of Consent or Agenda Item: Per Title 21- A§101.2 the municipal officers of each municipality shall appoint a qualified registrar, in writing, by January 1st of each odd – numbered year. Term to expire 01-2023

Submitted by: Linda Dumont, Town Clerk **Date:** 12/8/2020

Board of Selectmen Meeting

For the date of: 12/17/2020

Type of Item:

- Board or Committee Presentation
 Consent Agenda Item
 Public Hearing
 Unfinished Business
 Old Business
 New Business
 Executive Session
 Workshop

Type of Submission:

- Regular Submission
 Additional Agenda Item
 Additional Information

Agenda Number 20-93

(If this is unfinished business, please remember to research and enter the original agenda number above. For regular agenda items, the secretary will assign a number.)

Brief Title of consent or Agenda Item: Consideration and any appropriate action on the final report and recommendations of the Government Review Committee.

Brief Description of Consent or Agenda Item: see attached

Submitted by John Shattuck, TDI Director- Staff Contact for GRC

Date: 12-03-

2020

MEMORANDUM

Date: 2020-12-09

For: 2020-12-17 Selectmen's meeting

Fr: John Shattuck

To: Derek Scrapchansky & Board of Selectmen

Re: Report of the Government Review Committee

This memorandum is submitted pursuant to the action of the members of the Government Review Committee (GRC) and on their behalf. The report of the Government Review Committee is attached.

The GRC first presented the Committee's attached report to the Selectmen, as part of a GRC committee update, at the Select Board's regular meeting on November 19th, 2020. The Committee wishes to thank the Selectmen for their thoughtful consideration of the GRC's efforts and for their positive reception of the report as presented.

Some of the feedback we received during the Selectmen's meeting, and subsequently, focused on a number of the issues cited in the report, eg: decision making, recall, grants, ordinances, etc. These specific topics were identified in the Committee's report because they came up repeatedly throughout the GRC's research process, but the Committee wants to be clear that the GRC report is not making specific recommendations regarding any of these issues.

If a Charter Commission is formed, it will be their responsibility to fully investigate the advantages and disadvantages of a Charter, and the Committee hopes that the identified issues may provide a good starting point for a Charter Commission's deliberations.

If there are further questions or comments regarding the Committee's report, GRC Chair Matthew Abbott will be available to address them at the Select Board's December 17th meeting, or via email at matthewabbott87@gmail.com.

GOAL

To revise and bring up to date Chapter Six of the town code.

MISSION STATEMENT

Assess the administration of Topsham's government through collaborative review, and make recommendations, as needed, to update how Topsham's Government operates. (Per: Chapter 6 of Town Code)

OBJECTIVES

- Analyze the existing form of government
- Analyze other forms of government
- Make a committee recommendation to form a charter commission or not
- Articulate recommendations to bring Chapter 6 up to date

REVIEW PROCESS

The committee originally met in October 2019 in person until March of 2020 when the COVID 19 pandemic impacted the ability to meet in person. The committee met on recorded Zoom meetings until coming to a consensus of our recommendation in August 2020.

Our process began with setting ground rules for decision making and establishing a list of topics to research before making informed recommendations. A mission statement was established to help guide the committee. Decision making was made by consensus throughout the process.

We studied the current form of government in Topsham by reading Chapter 6 and 7 of the Topsham Code as well as information on the Maine Municipal Association (MMA) website. The committee also received input from the town's manager and department heads as to how the form of government impacts their department. Topics that came up as being impacted by the form of government are Tax Increment Financing (TIFS), ordinances, and grants. This information provided us with the base for additional research we would perform.

We then delved into past reports of the Government Review Committee, the Government Improvement Committee, and Charter Commissions. As we reviewed documents published by those groups our committee discussed if the topics identified were still relevant today. These discussions discovered that a lot of similar issues were identified in the previous groups work. Recognizing that documents had a limitation on what information they could provide the committee reached out to members of previous groups or individuals who have been involved in the community for a long period for an interview of their perspective. These individuals provided additional insight into the issues identified in the reports. Another perspective that the committee considered was other communities that were like Topsham and their experiences with various forms of government. An informational questionnaire was sent to these communities, the communities of Lisbon, Cumberland and Yarmouth responded. Every community was unique but shared similar trends and concerns that were identified by the Committee.

Another piece to our research was researching how other communities in Maine are governed and the options available for town government. This research was performed by reading "All Those in Favor" and information published on the MMA website. The book and website gave the committee members a good understanding of the available options but to fully understand legal authorities and limitations of each option the committee engaged an MMA attorney. Topics that highlighted the legal differences in types of government were recalls,

budgets, grants, and ordinances. With a better understanding of legal authorities and limitations the committee decided it was prepared to make recommendations.

RECOMMENDATIONS

The Committee recommends to the Board of Selectmen that a charter commission be formed. The charter commission should review the current form of government in Topsham in its entirety with specific focus on the topics below that the Committee believes deserve particular attention.

Decision Making – Dating back to 2008 town meeting is attended by less than .04% of registered voters in Topsham. The current government system dictates that most significant decisions such as Budget are to be decided on during the town meeting. This Committee recognizes that there is a potential for a small group of citizens to have a large impact on the community and the potential negative consequences may outweigh the positive value of citizens to have a direct impact to their town. Many of the warrant items that come to town meeting are complex and achieving a well-informed citizenry is a potentially insurmountable challenge. The communities that responded to the survey faced similar situations where they found that informed decision making was a worthy goal for a local government. Informed decision making, with something like a town council, can provide stability as well as more in-depth discussion during the decision-making process. The pros and cons of town meeting vs council should be looked at in detail.

Select Board – Topsham is a diverse community geographically as well as economically. Should the Select Board be elected from districts, should they be elected at large, or a combination of both? Do we maintain the current size of the Select Board or change the membership size? Do we implement term limits? The structure should be evaluated and organized to best serve the community. Some changes will require a charter for implementation.

Recall - The current form of government is managed by state statute and does not legally allow for recall. For example, if the residents of Topsham would like to recall a Select Board member for a code of conduct violation there are currently no provisions to do so, to implement a process for that a charter would be required.

Grants – Some grants that have the potential to help the community are time sensitive and the process to obtain permission to apply for them from the community can cause grant deadlines to be missed. To adjust where the authority for permission to apply is situated a charter would be required.

Ordinances – Currently, limited authority on ordinances rests with the Select Board which can impact business development opportunities and implementation of the town Comprehensive Plan. If the charter commission believes more authority should rest with the Select Board it would require a charter.

Respectfully submitted,

TOPSHAM GOVERNMENT REVIEW COMMITTEE

Matthew Abbott, Chair

Edward Caron

Pamela Hile

Ruth Lyons

James Mrazek

Susan Rae-Reeves

APPENDICES

- 1 Legal Questions to Maine Municipal Services Attorneys**
- 2 Municipal Survey Questions Responses**
- 3 Department Head Comments**

ADDITIONAL DOCUMENTS

Previous Government Review Committee Reports, and additional documents that were utilized by the Committee can be found at the following link:

<https://www.topshammaine.com/index.asp?SEC=12324C3E-C4AF-482C-BE28-A25060AB37CC>

1 LEGAL QUESTIONS TO MAINE MUNICIPAL ASSOCIATION LEGAL SERVICES ATTORNEYS

Below are the Committee's questions to the MMA Legal Services attorneys and the responses received.

QUESTIONS – TOPSHAM GOVERNMENT REVIEW COMMITTEE

Delegation of powers: Within a Town Meeting-Selectmen-Manager form of government, what authority, powers, or functions can the Town Meeting/legislative body delegate to the Selectmen, either with or without a charter?

Adoption of requirements: Within a Town Meeting-Selectmen-Manager form of government, what non-legislative requirements, procedure, rules, and qualifications requirements, qualifications can be adopted or established with a charter that are not available without a charter.

Note: Since, obviously, we don't know what we don't know, it would be very helpful if you could provide a variety of examples to help us understand the range – or limitation – of options for each question

ANSWERS - MAINE MUNICIPAL ASSOCIATION LEGAL SERVICES ATTORNEYS

Your Committee has asked two broad questions:

1. Delegation of powers: Within a Town Meeting-Selectmen-Manager form of government, what authority, powers, or functions can the Town Meeting/legislative body delegate to the Selectmen, either with or without a charter?

- The town meeting may only delegate general authority to raise funds from taxation, appropriate funds toward expenditures, or approve the annual budget through a charter.
- The town meeting may delegate spending authority to the Select Board in fairly broad terms, but as noted above, it cannot completely delegate the authority to determine and approve spending without doing so via a charter. Without a charter, at some point and on some basic terms, the town meeting must approve the purpose of expenditures before the Select Board may spend.
- The town meeting may only delegate authority to adopt ordinances (beyond ordinance powers granted to the board in state law) through a charter.
- There are certain actions that can be taken by either ordinance or charter. The primary difference is that an ordinance can be revised or repealed by a simple town meeting vote. A charter provision may only be altered through the charter revision or amendment process – a much longer and more involved process. For example, the town manager form of government can be created by a simple town meeting vote adopting the statutory plan, or a unique set of town manager powers and duties can be created by either ordinance or charter. However, any tweaks to the plan or changes in the powers granted the manager v. Select Board in a charter could only be made through a charter amendment/revision.
- A committee could be created by charter, ordinance, warrant article or perhaps by the Select Board itself. However, if a committee were to be vested with powers that the Select Board ordinarily holds, a charter is likely necessary. For example, the Town of York's charter provides a great deal of authority to the budget committee during preparation of the budget and warrant articles. In a town meeting form of government, the Select Board determines the wording of warrant articles and the budget amounts presented to voters (absent a citizen petition). While there is no court decision on this issue, I think a charter is likely necessary to remove that authority from the Select Board and give it to any other committee or official.
- Either an ordinance or charter (or warrant article) can delegate authority to the Select Board to transfer funds between accounts or spend funds from surplus for emergencies or unforeseen expenses. Many charters (especially those authorizing the board to adopt the budget) actually limit both the board (and the voters) as to transfers between budget categories and/or new expenditures outside the annual budget process. Without any limits imposed by a charter, a Select Board is free under state law to call as many town

meetings as it wishes and propose transfers of funds or new spending to the town meeting, and the voters would be free to approve those proposals. The town meeting could not eliminate this discretion to propose transfers/spending without a charter. Even if a non-charter town passed an ordinance or article prohibiting transfers between accounts, the board could at any time call a town meeting and ask the voters to rescind those limits or repeal the ordinance. The only limit would be the existing rule in state law that the voters cannot raise funds from taxation after property taxes have been committed for that year.

- Ordinances or town meeting warrant articles can delegate authority to the Select Board to take specific actions. For example, the town meeting may provide authority and procedures to sell tax-acquired property, sell personal property or equipment, or implement a specific new program. The town meeting may provide authority to purchase or impose purchasing procedures in fairly broad terms through warrant article, ordinance or charter. However, a charter would likely be needed to provide the board with generalized authority to buy or sell property, particularly real estate, or to establish any new programs generally. In my opinion, the town meeting can't delegate broad, blanket authority in these areas, but a charter can.

2. Adoption of requirements: Within a Town Meeting-Selectmen-Manager form of government, what non-legislative requirements, procedure, rules, and qualifications requirements, qualifications can be adopted or established with a charter that are not available without a charter.

There are areas where state law prescribes certain qualifications and procedures that can only be varied through a charter. This is generally because the applicable state law specifically states (or has been interpreted as) requiring a charter in order to provide otherwise. You asked about non-legislative requirements, but I will also mention some ways that a charter can limit the municipal voters themselves or the town meeting's ability to act as it wishes.

- For example, 30-A MRS § 2526, which governs how certain officials are chosen and governs minimum qualifications for municipal office, specifically states that its rules apply "unless otherwise provided by charter." If a municipality wants to place additional qualifications on holding municipal office, such as requirement that officials other than Select Board or school committee be registered voters or residents, this would need to be accomplished via a charter. Along the same lines, any disqualification for office, such as relating to criminal history, or length of time a person has been a registered voter for Select Board members, would need to be imposed via charter. See a 2011 Legal Note for more information: <https://www.memun.org/Member-Center/Legal-Notes/Legal-Notes-View/ArticleId/301/Felons-Litigants-Tax-Delinquents> and a 2012 Legal Note: <https://www.memun.org/Member-Center/Legal-Notes/Legal-Notes-View/ArticleId/257/Tax-Delinquents-Municipal-Office>
- Prohibiting Select Board members from holding other elected offices (beyond what would be legally incompatible or addressed in statute) could only be imposed via charter.
- Term limits can only be imposed via a charter. For more information, see a January 2019 Legal Note on Term Limits : <https://www.memun.org/Member-Center/Legal-Notes/Legal-Notes-View/ArticleId/10389/Municipal-Term-Limits>
- The date of annual town meeting is within the discretion of the Select Board unless provided by charter. See a 2013 Legal Note on the issue: <https://www.memun.org/Member-Center/Legal-Notes/Legal-Notes-View/ArticleId/206/Date-of-Town-Meeting> . Many charters set a specific date for the annual meeting/elections.
- A municipality may only limit the Select Board's discretion to call special town meetings through a charter. Some charters limit the reasons the board may call special town meetings during the year. An ordinance or warrant article could not remove or limit the board's discretion in these areas.
- Only a charter could limit the board's discretion to choose between open or secret ballot town meetings (assuming the town has previously accepted secret ballot voting under 30-A MRS § 2528). See a 2012 Legal Note on all -referendum voting: <https://www.memun.org/Member-Center/Legal-Notes/Legal-Notes-View/ArticleId/259/Charter-Required-for-All-Referendum-Voting> .
- Spending limits can only be imposed on the town meeting itself (or legislative body) by charter. See e.g., Bath charter (<https://www.cityofbath.com/media/Government/Charter/Charter%2011-06-2020.pdf>).

- A charter is necessary to alter the statutory procedures or time frames for calling a town meeting, posting a warrant, local nominations and election procedures, local recount procedures, minimum number of votes required to be elected, or local ballot requirements that are set out in state law. See 30-A MRS § 2501.
- If a municipality wished to change citizen petition procedures, restrict the types of issues that can be the subject of voter initiatives, or mandate all-referendum voting, these requirements would have to be imposed via a charter.
- To impose a quorum for town meetings, a charter is necessary.
- You may have already seen the following 2009 Legal Note discussing when a charter might be desired. If not, a link is attached: <https://www.memun.org/Member-Center/Legal-Notes/Legal-Notes-View/ArticleId/364/Why-a-Municipal-Charter>
- If the Committee is considering delegation of specific types of powers, please let us know and we may be able to provide additional information.

2 MUNICIPAL FORM OF GOVERNMENT SURVEY QUESTIONS AND RESPONSES

The Committee identified eight municipalities with similar populations and density as the Town of Topsham, and asked for their responses to the survey questions shown below. Below are the three community responses received by the Committee. These responses were copied directly into this report and no edits were made.

TOWN OF LISBON

Date: 9/4/2020

Town: Lisbon

Population: 9,100

Your name and title/role: Diane Barnes, Town Manager

1. What form of government do you currently have?

Manager/Council

2. Do you have a charter – if yes, when was it adopted?

2008

2. Have there been changes in your form of government in the last 20 years?

Yes. Lisbon used to be a Selectman form of government.

4. If change were made, what were they and what prompted the change(s)?

Not enough attendance at Town Meetings.

5. From your point of view, how are things working?

This form of government works very well especially due to the low resident participation in meetings. It's important for those who are making the decisions to be informed.

6. What are the pros and cons, as you see them, to your current form of government?

Pros - The decision makers are informed.

I don't see any cons with this form of government.

7. What are some of the current challenges you face?

Getting citizens engaged in public meetings so that they are informed. Social media is very challenging due to the misinformation being posted.

8. What is the level of participation you have in town governance?

Very low

9. Have citizen participation levels changed in the last 20 years?

Yes there has been a decrease in public participation.

TOWN OF YARMOUTH

Date: September 8, 2020

Population: 8477 (est)

Your name and title/role: Nat Tupper, Town Manager

1. What form of government do you currently have?

Town Meeting-Town Council- Town Manager

2. Do you have a charter – if yes, when was it adopted?

Charter first adopted in 1965. Minor amendments since.

3. Have there been changes in your form of government in the last 20 years? No significant changes in form of government

4. If change were made, what were they and what prompted the change(s)?

- Term limits adopted.
- Town Council appropriations limit (from surplus) increased to \$100,000.
- Compensation for Elected Officials increased (now \$1000/yr)
- Prohibition of employees holding office adopted (currently under appeal) • Minor technical amendments

5. From your point of view, how are things working?

Things are working well- although it can be difficult to pinpoint any challenging issues or matters as being related to form of government as opposed to the thorniness of the issue itself of the expected tug and pull of resources and priorities.

Cynicism, willingness to run/serve, procedural /non-substantive issues have become more troublesome in recent years, and policy/political decisions are much more divisive in recent years. Again- I don't believe this relates to form of government. But the time commitment needs for effective Town Council members has become an excessive burden as a result.

6. What are the pros and cons, as you see them, to your current form of government?

Professional and stable management (2 managers over the past 41 years); outstanding professional/department head staff, high quality/high value services and infrastructure. Elected officials have high trust in staff. Excellent staff retention and recruitment. Very responsive and supportive role with citizen committees, boards and task forces. High community engagement. Consistent/strong support of budgets and taxes (despite the rancor and significant increases in recent years.)

7. What are some of the current challenges you face?

Divisiveness. Nimbyism. Social media and an overall reduction in civility/productive civic discourse. Growth and debt burdens. Housing opportunities (for the not wealthy).

8. What is the level of participation you have in town governance?

Personally: Manager for 29+ years in Yarmouth, nearly 40 overall.

Elected officials: High engagement but it is an excessive burden for working/family members. Citizen Boards and Committees: Very high. Yarmouth is very citizen activist/leadership driven

Citizens- Good participation, usually strong voter turnout, pretty good, informed engagement and interest.

9. Have citizen participation levels changed in the last 20 years?

Yes- with high community turnover, a lot of the old guard civic leaders model has given way to rising stars and/or big egos. Participation is something of a risk due to Social Media fishbowl phenomena.

Still- Outstanding, well-motivated, smart, hardworking people do volunteer and run, and usually can make a substantial contribution.

TOWN OF CUMBERLAND

Date: September 2, 2020

Population: Est. 8,500 awaiting Census

Your name and title/role: William R. Shane, Town Manager

1. What form of government do you currently have?

Council/Manager

2. Do you have a charter – if yes, when was it adopted?

Yes- Jan 1, 1996

4. Have there been changes in your form of government in the last 20 years?

No

5. If change were made, what were they and what prompted the change(s)?

NA

5. From your point of view, how are things working?

Very well

6. What are the pros and cons, as you see them, to your current form of government?

Positives – things get done quickly

Negatives- some citizens may feel disenfranchised with a representative democracy

7. What are some of the current challenges you face?

Rising School costs, high taxes, low percentage of commercial to residential tax base 8% commercial – 92 % residential.

8. What is the level of participation you have in town governance?

I am the one and only employee of the Town Council... so very active role.

9. Have citizen participation levels changed in the last 20 years?

Up and down – depending on the item. We lost Chebeague Island in 2007 is a secession vote amicable separation, but we lost 10% of our tax base.

3 DEPARTMENT HEAD COMMENTS

The Committee asked that Town of Topsham provide the Committee with their comments on how form of government could effect the function on municipal government. At the Committee's August 12th, 2020 meeting, John Shattuck, Economic & Community Development Director, provided a verbal report on department head comments made during a discussion on form of government issues earlier that day. That meeting's minutes summarized the ideas and suggestions offered by department heads about Topsham's form of government:

Participation: Concerns about Town Meeting attendance have persisted for many years. However, a more meaningful participation data point might be the aggregate of resident participation in town affairs during a year. Town meeting attendance has averaged about 100 in recent years. The number of highly engaged town residents, who attend workshops, serve on committees, etc., is roughly 60-80. With any form of government, department heads are confident that there are a core group of active town residents who will continue to be engaged. The significant difference, by their observation, is in the level of informedness. Residents who are active in town matters and who are engaged on particular issues are generally well informed. Two department heads have experience in both forms of government and said that participation was generally more informed at council meetings, while at town meeting, many participants have not read supplemental material about warrants. A good comparison is with current participation in Topsham's various committees, where people volunteer who have an interest, get informed, and reach out and engage residents who are interested as well.

Efficiency: The group voiced pros and cons. On the plus side a council form of government offers more options for speed of response, the ability to make policy and ordinance changes in a timely way, to respond to business development opportunities more quickly, and to be formulate agenda items for meetings in ways that are sensitive to timing and citizen concern. Most actions require two readings, so changes are not instantaneous, and there is time for feedback. So the timeframe for response is biweekly or at most monthly, whereas with the select board/town meeting form of government allows all items that arise throughout the year to be grouped for the annual meeting in a lengthy warrant. There are workarounds, i.e. calling a special town meeting, but in practice this has occurred rarely and attendance has been poor. On the con side, with speed there can be errors, and those with experience of a council recounted in-stances of this. Finally, at council meetings agendas are more focused, with a few items brought as committees and resident feedback seem to require. At town meeting, there is a long list of warrant items bundled for a potentially much longer meeting that exceeds the patience of many.

Accountability: The warrant is formed through intense involvement of residents, who are in-formed about the relevant issues. When it goes to the town meeting, it is considered by all those attending, many of whom are uninformed, or at best informed about a few issues. There is a lack of accountability, no transparency about formulation of the warrant, and the work product, with pros and cons considered, is not visible. Town meeting is more vulnerable to the per-suasion of a small group that can tip a decision toward its interests as opposed to a process with accountability that must consider and balance the interests of the town.

Finances: Finally, how are budgets affected by different forms of government? There were differing points of view on this. Looking at Brunswick, with a council FOG, one sees a high level of debt. If a council form of government is more focused and thoughtful and informed, why would the town be saddled with so much debt? What seems to occur is that commitments are made as needs come up during the year and these affect the following year's budget. When it comes time to review the overall budget, the council is forced to either cut or borrow, because of the commitments made along the way. Experience with another town (Millinocket), indicated that with the council form of government residents seemed to have more influence and feeling of control over the budget process."

Board of Selectmen Meeting

For the date of: 12/17/2020

Type of Item:

- Board or Committee Presentation
 Consent Agenda Item
 Public Hearing
 Unfinished Business
 Old Business
 New Business
 Executive Session
 Workshop

Type of Submission:

- Regular Submission
 Additional Agenda Item
 Additional Information

Agenda Number 20-94

(If this is unfinished business, please remember to research and enter the original agenda number above. For regular agenda items, the secretary will assign a number.)

Brief Title of consent or Agenda Item: Consideration and any appropriate action on memorandum and recommendations of the Topsham Development, Inc Board of Directors regarding possible by-laws revisions.

Brief Description of Consent or Agenda Item: see attached

Submitted by John Shattuck, TDI Director-

Date: 12-03-2020

MEMORANDUM

Date: 2020-12-09

For: 2020-12-17 Selectmen's meeting

Fr: John Shattuck

To: Derek Scrapchansky & Board of Selectmen

Re: Topsham Development, Inc (TDI) - Planning Board (PB) perceived conflict of interest issue

This memorandum is submitted pursuant to the action of the directors of TDI and on their behalf.

At their 11-05 meeting, the Selectmen asked for input from directors of TDI regarding the perceived TDI-PB conflict of interest issue with the following request:

The Select Board requests that TDI's board identify the benefits and drawbacks of having a dedicated seat for a planning board member (either voting or non-voting) on the TDI board and make a recommendation as to whether it believes the benefits of having a designated planning board seat on its board of directors (either voting or non-voting) outweigh the drawbacks of that member having to recuse himself/herself in TDI's discussion of projects which are expected to come before the planning board.

At their 11-18 meeting, the directors of TDI voted unanimously in support of the following responses to the Selectmen's above request:

- Neither the current TDI board nor Town staff are aware of the rationale for including a designated seat for a PB member on the TDI board in the TDI bylaws, since at least 2003.
 - The assumed purpose and primary benefit of having a designated PB member serve as a director on TDI Board is to provide a liaison function between boards.
- While this function may have merit, it has been common that PB members on the TDI board have repeatedly recused themselves from participation in projects that would be brought before the PB, reducing their effectiveness on TDI and possibly the PB.
 - Another significant drawback of having a PB member on the TDI Board is appearance or perception of a conflict of interest.
 - The source of the appearance or perception of a conflict of interest is that TDI's role is advocacy for business/economic development, while the PB's role is regulatory and frequently involves business projects or economic development policy.
 - Any TDI director may have to recuse due to an occasional conflict of interest in connection with an individual project, but virtually every business project on which TDI takes a position will come before the PB. As a result, a designated PB seat on the TDI board will continue to generate controversy and the appearance of conflict. In fact, this has already happened three times just during 2020.
 - This perceived conflict of interest has also recently prompted a significant number of negative public comments in connection with TDI's support of the Crooker rezoning process before the PB.
- Even without a designated PB seat on the TDI board, the PB is already represented by presence of the Topsham Planning Director as a non-voting director, which provides a very effective liaison function between the two boards.

- In view of the above, the directors of TDI believe that the benefits of having a designated Planning Board (PB) member (either voting or non-voting) serve as a director on TDI Board are minimal, while the drawbacks of creating the appearance or perception of a conflict of interest are significant and damaging to both TDI and the PB.

At their 11-18 meeting, the directors of TDI also discussed possible approaches to resolving the perceived TDI-PB conflict of interest issue, and voted unanimously to propose that the following revisions of the TDI bylaws should be offered for the Selectmen's consideration:

- Revision of Article 3 of the TDI bylaws to eliminate the provision establishing a designated PB seat on the TDI board of directors.
- Addition of an article to the TDI bylaws defining expectations for disclosure and recusal in matters involving potential conflicts of interest.
- If the Selectmen would care to review such revisions of the TDI bylaws, the directors will be pleased to draft such potential bylaw revisions and present them to the Selectmen for their consideration.

Board of Selectmen Meeting

For the date of: 12/17/2020

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- Old Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number 20-95

(If this is unfinished business, please remember to research and enter the original agenda number above. For regular agenda items, the secretary will assign a number.)

Brief Title of consent or Agenda Item: Consideration and any appropriate action to enter into Executive Session pursuant to 1 M.R.S.A. § 405 (6) (C) to discuss acquisition of real property or economic development.

Brief Description of Consent or Agenda Item: see attached

Submitted by John Shattuck, TDI Director- Staff Contact for GRC

Date: 12-07-2020