

**REGULAR COUNCIL MEETING  
GARDINER CITY COUNCIL  
Wednesday, November 4, 2009  
City Council Chambers  
7:00 p.m. Business Meeting**

**ADDENDUM AGENDA**

**1. CALL TO ORDER**

Meeting was called to order at 7:03pm. A motion to accept the addendum agenda was made by **Councilor Trask**, Second by **Councilor Nickless**, Vote: unanimous.

A motion to move into an Executive Session for the purpose of labor negotiations was made by **Councilor Rambo**, Second by **Councilor Nickless**, Vote: Unanimous.

**2. EXECUTIVE SESSION - per MRSA, Title 1, Chapter 13, Section 405 (6) (A) Labor Negotiations**

The Executive Session ended at 7:40pm. A motion was made by **Councilor Holmes** to approve a 3 year contract between the City of Gardiner and the Police Association as presented by staff here tonight, Second by **Councilor Rambo**.

**Councilor Hart** said he feels this is the wrong time to give out raises and he thinks a one and two percent raise and a \$500.00 bonus is asking way too much of the taxpayers. There are a lot of people out of jobs right now .Unemployment rate is 10% and he is concerned whether people will have a job tomorrow. He knows the economy is bad and he just feels this is poor timing. That is the only reason he won't support it, it is not because of the employees. He feels we have good employees.

Vote: 5 votes in the affirmative with **Councilors Trask** and **Hart** opposed.

**3. ROLL CALL**

In attendance: **Mayor Andrew MacLean, Councilor Richard Rambo, Councilor Rich Nickless, Councilor Ken Holmes, Councilor Phil hart, Councilor George Trask, Councilor Robert Johnston.** Absent: **Councilor Michael Giberson.**

**4. PETITIONS, COMMUNICATIONS, RESOLUTIONS, & PUBLIC HEARINGS**

**4.1 Consideration of Comments from the Public on Issues that Do Not Appear Elsewhere on the Agenda (Please limit comments to five minutes.)**

**Mayor MacLean** opened the floor to members of the public and **Mr. Ted Potter** inquired as to whether or not they would be discussing the crematorium this evening. The Mayor replied yes. There being no other comments the Mayor closed the public forum.

**7.5 Presentation of Spirit of America Award**

**Bruce Flaherty** of the Spirit of America Foundation came to present the award to the Recycling Advisory Committee. The committee is chaired by **Judy Dorsey**. The Mayor thanked **Judy** and the Committee members who were present for their efforts and commended them on the job they have done.

**Discussion with Recycling Committee**

**Judy** spoke on behalf of the committee and said she wanted to update the Council on what they have done since the last time she met with them. The group received a small

grant to use for educational purposes. They had some flyers and magnets made up and had a booth at the Celebrate Gardiner Festival on June 20<sup>th</sup>. They provided the haulers with educational materials which were passed on to the customers. They had an E-waste day at which people could bring old electronics, printers, TV's etc. **Judy** said they filled a large tractor trailer truck. They processed 192 vehicles, half of which were from Gardiner. The others were from surrounding communities. Some ongoing projects include working with local schools and Hannaford to help increase awareness about recycling. They are also working with the Gardiner Main Street group. Two weeks ago they received the first quarterly reports from the haulers. **Judy** said they were very revealing. Currently about 2/3 of the recycling comes from businesses not residents so they recognize that they need to work harder to get residents on board.

**Councilor Hart** said one incentive that works for him is in knowing that everything that he recycles make his trash bags lighter which costs him less. **Judy** said that unfortunately most of the haulers don't charge by weight but rather by the bag. She said she would like to see that change.

#### **7.1 Discussion of Follow Up to Order 09-58, Moratorium on Crematoria**

**Mayor MacLean** said he had promised that he would come forward with a process for handling the issue and he offers a proposal tonight that comes from him and him alone. With advice from City staff and legal council he suggests establishing a joint staff and resident committee. He would work with **Anne, Jason Simcock, and Dave Cichowski** on development of a document that would be a resolution which they would present at the next business meeting. It would include at least one outside source and he suggests **Bill Najpauer** who is a Planning and Development professional who works with the Planning Board, and five citizens. The Mayor proposes naming two partisans, one on each side of the issue, and three neutral or disinterested people from the community. They would charge those people with specific duties. Those appointments will come from the Mayor and the Acting City manager but people will have an opportunity to comment regarding membership. He wants to allow a decent amount of time to work on this and he has no firm date in mind but is thinking mid to late January. He said that is negotiable.

**Councilor Johnston** said he feels the Mayor's idea has a lot of merit. He also noted that the Mayor specifically did not involve the Council which he thinks make sense since ultimately at some point the Council will have to vote on whatever recommendations come out of it. In the spirit of what was heard last week this gives enough space so that some fruitful discussions can be engaged in as we try and resolve this issue once and for all. The challenge he believes will be in choosing the two partisans and his hope is that those two, whoever they are, will have the true spirit of the community ever present so that we are not getting into any kind of shouting match. He feels the tenor of last weeks meeting was good as everyone came with a lot of passion but they also came with a certain amount of equilibrium which he thought was terrific. He is in support of this and thanks **Mayor MacLean** for suggesting it.

**Mayor MacLean** said one thing he wanted to mention is that this committee will meet in public so that no one is excluded. Those who are not on the committee would be welcome to come and observe the process and participate in the deliberations.

**Councilor Hart** said he too thinks the plan sounds good. He is unsure if you can find three neutral people. What he would like to say and Anne summed it up in her memo, is that everyone needs to remember that we are all neighbors and relatives and friends. We need to find a neutral ground for this and hopefully the community can accept the outcome of this no matter what it is. He hopes the community will stay involved in this till the end to make sure that everything is played out correctly so no one can cry wolf at the end. That is the last thing he wants to see happen. He wants everyone to be able to live in peace and have a good

community to live in.

**Councilor Rambo** said it has been a good process, good dialogue so far. He feels what the Mayor is suggesting makes all the sense in the world and he has every expectation of good results. One question he does have is and he expects it will probably be resolved next week is the charge to the Council. He believes it should be very explicit and direct as was the case when they were dealing with the changes to the Common.

**Councilor Nickless** said he agrees with the plan. His question is what role, if any, would the Planning Board play? **Mayor MacLean** replied that they would remain insulated from this. What we are having now is a policy discussion and they will be held harmless from that and reserved in case this matter comes back before them in their quasi judicial role. **Pat Hart** with their council's advice made that quite clear to them at the meeting last week after the council meeting.

**Councilor Holmes** asked the Mayor to describe the charge to this committee again. Mayor **MacLean** responded that we could discuss that this evening, but he hadn't given his thoughts on that yet. Since that may generate lots of comments from the public he suggested going one round of comments from the Council and then offering the public a chance to speak on the description of what the process may be and then he will come back to what the charge may be.

**Councilor Johnston** said that the one big question seems to be should there be a crematorium established in the Oak Grove Cemetery? It seems fairly simple but complex and he feels that should be the charge to the committee. In particular when he was reviewing the minutes of the meeting he was struck by the list of things that **Joe Donahue** suggested which sounded like a pretty good laundry list of some of the issues that actually speak to that core question. Johnston said his understanding under current State statute, the only place in the City of Gardiner that a crematory could be established is the Oak Grove Cemetery because of the State's statutes of limits of size, acreage, how many funerals have happened in the recent past and the capacity for having funerals in the future. He believes that is sort of the rough rubric of the State's concern as to whether or not you can site a crematorium somewhere. That being said, the only question that needs to be answered is should a crematorium be established at Oak Grove Cemetery? It's not as if we can say "yeah, let's put one out at Libby Hill". Libby Hill is obviously not a cemetery. In these discussions, with the laundry list that Joe listed, and he is sure there are other things that need to be thought through as well, the committee should have a fairly broad scope in which to discuss them. One of the things that he thinks really has to be addressed is what are the neighbors and the abutter's concrete and sincere concerns, and whether or not they can be addressed objectively or whether they can only be addressed subjectively? If we can resolve those questions it will go a long way towards answering the big question.

**Councilor Holmes** said he disagrees with **Councilor Johnston**. He doesn't see it as a yes or no question. He thinks he got the first half of the question right, should there a crematorium? He thinks the second half of the question is if the answer is yes, then at what scale, what size, what limits do we put on it? **Councilor Johnston** said he accepts that and thinks that is a valid point, but thinks that is dropping down one level. **Councilor Holmes** doesn't want to charge this committee with coming back all in or nothing. **Councilor Johnston** said he was speaking broadly at this point.

**Councilor Trask** said it is not as black and white as **Councilor Johnston** says. He said he goes along with the Mayor's proposal but in the meantime we should be talking with our representative **Steve Hanley** and **Earle McCormick** several other senators and representatives around the State and possibly get this law changed. **Councilor Trask** said he has heard them say they have been trying for three years, five years, ten years and evidently they are not trying hard enough, because it seems like **John Martin** gets all the nice paved roads up in Eagle Lake so maybe he is the one to talk to about a crematorium. Then you can put it up in the Industrial Park or wherever you want to put it. He doesn't care, put it up at the AG. He thinks that is what the charge should be instead of just talking to people who live in the area. He thinks we have to

get the State of Maine involved and get our representatives to represent us. If the people who want this crematorium want it bad enough they are going to have to do some of the leg work too. It can't be just up to the people who live in that neighborhood. **Councilor Trask** said that is how he feels and he thinks that should be a part of the charge to the committee. **Mayor MacLean** said **Representative Hanley** made it clear last week that if a change in State law will help resolve this he is happy to try help make that happen. **Councilor Trask** said if we could put it out on one of our lots on Libby Hill that would be fantastic. **Councilor Nickless** said if you are going to get the State involved it will take more than 180 days. **Councilor Trask** said if we have to have another moratorium and extend it for another 180 days, it's been done in other towns. He said there is no rush; people are being cremated everyday without it. **Councilor Hart** said he thinks George has a good point. He thinks he hit the nail right on the head about getting after our representatives and really holding their feet to the fire and keep them moving. He thinks that would answer the big question. If we can get that changed it opens up where it can actually be and if we can put it someplace else that would definitely open up a can of worms. **Councilor Trask** said it would resolve our problems up on Plummer Street and in that area. **Councilor Hart** said that is just a suggestion.

**Mayor MacLean** said he doesn't disagree with anything that has been said, he does feel that part of the charge would have to be, without being overly intrusive into what he understands is a private non profit organization, we need to have a better sense of what financials issues there are that are facing the cemetery association and what other alternatives there may be. It may be a crematorium elsewhere else in the City of Gardiner, with some change in State law, or it may be other alternatives that no one has thought of. The hope is that this group by putting their heads together might come up with some better alternatives.

**Victor Tessari** said he wanted to address **Councilors Trask** and **Hart** about trying to get the State to change the law to allow a crematory off the cemetery premise, it's been done, its been tried. He said just this past April they had new rules and regulations that were presented to the commission that overlooks this and it was soundly defeated. They want it inside a cemetery and they want the rules that are in place. It's been tried so you can ask **Steve Hanley** and he can go to Augusta but it's been done. It has been ruled this past October. **Victor** said he has them on his computer and he can show you. **Councilor Trask** said they have tried TABOR three times, just keep trying and you'll win. **Victor** said he isn't going to wait twenty years.

**Councilor Trask** asked what's the hurry? **Mayor MacLean** asked if this falls under the Funeral Directors rules and **Victor** said it falls under DHHS rules. He said he can provide a copy of the new rules. He said this is something they looked at before they came to the Council. **Mayor MacLean** said he would be surprised if they hadn't. He feels it is important for them to know but that it is something that the citizen committee can delve into in detail.

**Rusty Greenleaf** said in listening to all the discussion he just heard **Councilor Hart** elude to the fact that our Police force do a great job in this City and we cannot afford to give them a raise. Yet they are alluding to the tax base helping out with the cemetery. He thinks there is something wrong with his picture.

**Mr. Ted Potter** said he thinks the more guidelines you can give the better such as, identifying the advantages of a crematorium and identifying the disadvantages or any problems that may arise so that at least they take into consideration all the facts.

**Beverly Fernald LaPlante** said she has a question about the structure of the committee and how the roles will be designated. **Mayor MacLean** said that was a good question and they will have to look at that.

**Patty Martin** wanted to know how the non biased people would be chosen. **Mayor MacLean** said at this point it would be him and **Anne** putting their heads together and trying to identify people who have not to this point engaged in the debate on one side or the other. He said presumably they would not be abutter's. He is not saying we have to look clear across town.

**Patty** said her other question would be that she keeps hearing Libby Hill proposed as a site for

a crematorium and she wonders how the people who live in that area would feel about it being in their yard. **Councilor Trask** said to ask him, he lives right there. She said several of the people who live out there have small children so it would be in an area where there are children so she was just wondering how they might feel. **Councilor Trask** said they would probably feel the same as the people up on Plummer St. **Councilor Hart** said they were just using Libby Hill as an example as a place they could put it. He said he is not suggesting they change the ordinance and stick it in Libby Hill Business Park because you will have the same problem there.

**Mayor MacLean** asked if anyone else had anything further to say on this subject. He reminded everyone that the Council is not likely to meet again till after Thanksgiving. **Anne** reminded everyone that they can sign up for the bulletin board which will notify you via email when there is a posting to the City's website.

**Councilor Trask** asked for clarification as to whether or not the committee would be asking for the financials of the Cemetery Association. **Mayor MacLean** said he didn't put it that specific but he does think it is reasonable that if the community is involved in a discussion as a response to an identified financial problem that we have some better understanding about the magnitude of the problem and it may be that those issues have been identified but that the discussion has not taken place before the council. **Councilor Trask** asked if the whole city is involved in this, don't they have a right to know about this non profit holding company and what it contributes to the cemetery and where it is coming from? If we limit it to three hundred units a year and this non profit is making x amount of dollars, what percent of that x amount of dollars is going to maintain the cemetery and where are they getting that percentage from?

**Mayor MacLean** said he does not expect to resolve that tonight but he understands what **Councilor Trask** is driving at and he feels that some discussion about the business model and the financial capacity will be discussed which is always the case when these things come before the Planning Board. **Councilor Trask** said if the issue is about maintaining the cemetery, is a crematory really going to help out with that? If it is costing the city \$20,000 a year to maintain three cemeteries, which it isn't, is it going to cost \$ 40,000 to maintain Oak Grove? What has it cost in the past and what do they see as the future cost? Those are questions he thinks everybody needs answered because they may be able to do something different.

**Vic Tessari** said he wanted to address the fact they people are talking about units. He is in the business of handling human remains and it is offensive to him when **Councilor Trask** keeps referring to them as units. He said he understands it is a difficult subject when we talk about death and dying but these are human remains not units. **Councilor Trask** responded that he was referring to **Victor's** own paper work. He said he would bring it over to **Vic** tomorrow and show him.

**Hal Norvell** of 39 Lincoln Ave said since the subject of finances was brought up he would like to know how this will ultimately impact the City of Gardiner financially. Does it have an impact on the property value therefore taxation revenues into the City? How does that put us in competition with other surrounding communities? He said he doesn't know the answer but would like to be sure that those type questions will be included in what the committee takes into consideration. **Mayor MacLean** agreed and **Councilor Johnston** said it seems to him like that is something that can be measured and ought to be considered. He said there was a lot of discussion last week about property values last week and that is legitimate. **Mayor MacLean** said he would envision that they would go back through the comments that people made when they put this together.

Meeting recessed until 8:45

## **Public Hearing**

### **1. Public Hearing for Liquor License Application for The Mad Dog Pub**

**Mayor MacLean** opened up a public hearing for a liquor license for the Mad Dog Pub at 8:50.

No one had comment and the public hearing closed at 8:51pm. **Councilor Johnston** made a motion to approve a liquor license for the Mad Dog Pub, Second by **Councilor Trask**, Vote: Unanimous

### **5.3 Consideration of Order [09-59](#), Victualer's License**

**Councilor Trask** made a motion to approve a victualer's license to the Mad Dog Pub, Second by **Councilor Hart**, Vote: Unanimous

### **7.2 Presentation of [1<sup>st</sup> quarter](#) financials (Runyon [Memo](#))**

**Sandy** presented the financial and said there was nothing exciting to report. He was pleased that Question 2 did not go through and with regards to Question 4 he does not think it would have impacted municipalities as much as it would the State.

### **4. Consideration of Order [09-64](#), Settlement of Taxes**

**Anne** said that with the election there was not enough time to do the settlement so they just need more time.

**Councilor Nickless** made a motion to table Order 09-64, Second by **Councilor Rambo**, Vote: Unanimous.

### **3. Consideration of Order [09-62](#), Personal Property Tax Abatement**

As a result of the audit the City was asked to clean up some of the outstanding personal property taxes. **Kim** said she had made an attempt and all of the certified mailers were returned unclaimed. Only one account paid. Councilors wanted to know if any of these businesses were still in operation. **Mayor MacLean** asked if it is a case where **Kim/Anne** feel the amounts are so small that is isn't worth it. Councilors would like to see more effort made to collect on these accounts before writing them off. Inquired as to whether or not we have ever listed them on our website. Also asked if any of these places are looking to get permits form the City.

**Councilor Holmes** made a motion to table Order 09-62, Second by **Councilor Trask**, Vote: Unanimous.

### **7.6 Discussion of Comstar Ambulance Billing.**

**Fire Chief Rick Cody** explained the billing process. **Councilor Holmes** had questions/concerns as to what methods Comstar will use and any outsourcing and will they present themselves as the City of Gardiner.

### **1. Consideration of Order [09-63](#), Road Opening Permit**

The applicant is on the list of outstanding personal property tax. Discussion about whether or not we have to issue. The driveway project had already been started when it was brought to the Code Enforcement Officer's attention. He then asked the person to halt and follow the process to become permitted. Council decided to notify applicant that he would not be issued permits until he cleaned up his outstanding personal property tax bills.

A motion to deny the permit based on the City's policy was made by **Councilor Rambo**, Second by **Councilor Trask**, Vote: Unanimous. Applicant will have to reapply after all monies are paid.

## **CONSENT AGENDA**

### **5.1 Consideration of Accepting [October](#) Warrants**

Motion to approve made **Councilor Johnston**, Second by **Councilor Rambo**, Vote: Unanimous

### **5.2 Consideration of Councilor Holmes signing October Warrants**

Motion to approve made by **Councilor Johnston**, Second by **Councilor Rambo**, Vote: Unanimous

### **5.4 Consideration of Minutes [9/9](#), [10/7](#), [10/27](#)**

**Councilor Trask** complained about the minutes form the meeting on 10/27/09. He would like to see the fact that **Patty Martin** is a member of the Cemetery Association mentioned and also the gentlemen who spoke about a bed and breakfast does not actually own one, he was using it as an example. **Councilor Johnston** pointed out that some names were misspelled. **Mayor MacLean** mentioned that the end date of the moratorium is April of 2010 not January as noted

in the minutes.

Motion to approve the minutes as amended made by **Councilor Johnston**, Second by **Councilor Trask**, Vote: Unanimous

## 6. OLD BUSINESS

### 6.1 Second Reading Order [09-55](#), General Assistance Ordinance Appendices A-C

Motion to approve made by **Councilor Hart**, Second by **Councilor Nickless**, Vote: Unanimous

## 7. NEW BUSINESS

### 7.3 Reconsideration of Order 09-39, COLA vote

No new action was taken.

### 2. Consideration of Resolution [09-60](#), Boardwalk Trail Grant

Motion to approve made by **Councilor Rambo**, Second by **Councilor Trask**, Vote: Unanimous.

### 7.7 Consideration of Order 09-61, School Board Election Result Certifications

A motion to certify the election results made by **Councilor Hart**, Second by **Councilor Trask**, Vote: Unanimous

## 8. CITY MANAGER REPORT

**Anne** apologized for taking a vacation during one of the busiest weeks. She thanked staff for really stepping up. Wanted to acknowledge that we have two new employees. One new hire for Fire Department and one for Police. Also noted we are losing two employees from the front office. Both left for financial reasons. **Anne** said she really wants to get back to the search for a new City Manager so they need to schedule those second interviews. Also the City Ordinance review needs to happen. She spoke about her interest in the election process and that she stayed at the polls until they closed. She thanked all of the election clerks for their hard work and dedication. She also wanted to thank the staff who not only worked at City Hall all day but then came to the polls and worked all evening. She gave a shout out to **Nate Sutherburg** and **Jamie Dacyczyn** who were interested in the process and came to work the polls.

**Anne** reminded Councilors that if they have questions they should come to her and not be approaching staff. It muddies the water and makes it difficult for her to manage the city.

### Council Discussion

**Councilor Rambo** asked about scheduling for second interviews for City Manager as well as when they can schedule Council Meetings. He also asked about the City's purchasing policy and **Anne** said she would post it online.

**Councilor Holmes** said he was out of town on election day and when he returned late that night the KJ's website was down. He was very pleased to see that **Dee** had posted the results on the City website and thanked her.

**Councilor Trask** complained about Iron Mine Hill Trailer Park. He feels it looks like a dump. **Anne** said she would take a ride by there tomorrow to look at it but she knows that whenever the CEO goes out there are dogs chained up which keep him out. They are looking at ways to approach this and the resident's family is concerned as well.

**Councilor Johnston** said her wants to move ahead on the draft ordinance issue. He would like to see a summary of the changes.

**Mayor MacLean** said he will be out of town on business for the next two weeks but

would like to look at the following dates as options for Council meetings, Nov. 30, Dec 7th & 14<sup>th</sup>.

**10. ADJOURNMENT**

The Mayor adjourned the meeting at 10:20pm

Respectfully submitted,  
Kathy Cutler  
Council Clerk