

**SPECIAL MEETING MINUTES**  
**City Council of the City of Bath, Maine**  
**Wednesday, September 18, 2013**  
**Bath City Council Chambers**

Present: Councilors Brackett, Merrill, Paulhus, Lockwood, Eosco, Sinclair, Mitchell, Winglass and Chairman Wyman

Also in attendance were the City Manager – William Giroux, City Solicitor - Roger Therriault and City Clerk - Mary White.

Chairman Wyman led the Pledge of Allegiance and City Clerk White called the Roll.

**I. Public Hearing: Liquor and Special Amusement License Applications for:**

Winter Street Center  
880 Washington Street  
Contact Person: Sally Hagenbuch Demartini

Chairman Wyman opened the Public Hearing at 6:01PM.

Councilor Lockwood recused herself from the proceedings citing she was the past President for Sagadahoc Preservation Inc.

Councilor Eosco recused herself from the proceedings citing her mother and husband are members of the Board of Trustees for Sagadahoc Preservation Inc.

Sally Demartini, President of Sagadahoc Preservation Inc gave a brief overview of the ownership of the Winter Street Center and said the group hoped to use the income from the liquor sales at the events held at the Center to help cover expenses and renovate the sanctuary section of the building.

Councilor Merrill took her seat during Ms. Demartini's comments.

**VOTE on Licenses:**

**YEAS: Brackett, Merrill, Paulhus, Sinclair, Mitchell, Winglass**

**NAYS: None**

**RECUSED: Lockwood, Eosco**

**Licenses passed unanimously. 6-0**

**II. City of Bath Council Investigation**

City Solicitor Therriault stated that the Executive Session that Council had dealing with the Mid Coast sale was in January, not February, and the motion to waive with respect to the investigator specifically referenced the February Meeting. Therefore the motion needed to be expanded to include the January Meeting, as well, to make sure everything is transparent.

Councilor Eosco made a motion to include the January meeting in the motion to talk to the investigator about the Executive Session, which was seconded by Councilor Mitchell.

Councilor Sinclair asked Councilor Eosco due to the confusion on dates, etc. if, she would simply amend her motion to release any and all documents related to any and all Executive Sessions that touched in any way upon the topic of the sale of that property. He also urged not making it not limited to the disclosure to the investigator but rather disclosure to anyone and everyone who would like to see the information.

Councilor Eosco responded that she would like to separate it out a little bit and referenced the memo that was sent before that meeting and that it be kept in to talk to the investigator. She felt that the subject of releasing that to the public was another question and said that she had no problem with it but recalled that some Councilors had reservations about releasing some things to the public.

City Clerk White clarified that the motion would reference any and all documents of any and all meetings and/or Executive Sessions where the matter had been discussed.

Chairman Wyman opened the meeting for public comment.

Michael Wischkaemper stated that they had not asked for the investigation but observed that if they are ever wanted to discover what actually happened, it is the way to go. He expressed appreciation for the fact that the motion has been made to include whatever Executive Sessions might have included this as proper subjects for questions from the investigator, and the second part of Councilor Sinclair's suggestion, which is to make the documents public. He asked for clarification that the investigator would be allowed to speak to anyone who might have information, which Chairman Wyman confirmed to be the case.

Mr. Wischkaemper reiterated the need for transparency and referenced the letter from the Maine Municipal Association dated Sept. 3 to give advice and recalled that Councilor Sinclair had suggested that the MMA might not be the best source for unbiased information. He cited several instances where they have been contacted pertaining to this issue and felt this makes them a less unbiased transparent source of information for whom the City should choose to be an investigator.

Mr. Wischkaemper then suggested that in the selection of the investigator, it would behoove the Council and would be appropriate to make public the efforts that are being made to find an investigator. He said that if some sort of advertisement were to be posted, he suggested that should be available for review before it is sent out to wherever it needs to be, as well as any other communications occurring with potential investigators. He reiterated the need for transparency in this whole process. Mr. Wischkaemper pointed out that he couldn't have commented on the referenced memo at the last meeting because he didn't have it until after the meeting, and concluded that they might look for a way in which they might make documents and information available in advance of having it the subject of a City Council meeting.

Chairman Wyman asked for final comment and hearing none, a vote was taken.

**VOTE: 6 in favor, 2 opposed (Brackett, Paulhus)**

Chairman Wyman then recalled that Councilor Sinclair had a second motion to bring forward.

Councilor Sinclair made a motion that they release to everyone any documents that may have been shared either at those Executive Sessions or before that touched in any way or contemplated at that point the sale of the Midcoast Center for Higher Education, which was seconded by Councilor Merrill.

City Manager Giroux said that the referenced memo is the only document that he has known of all along that the Council got, which he believed was at the January meeting. He said that he is anxious to share everything he knows with the investigator, but felt that this document was innocuous and all it did was lead the Council to a discussion, so he felt they should just release it, but knew that Council would need to approve that.

Councilor Merrill then asked if the City had released the information that the Portland Press Herald was seeking regarding the FOAA.

City Manager Giroux explained that under the Freedom of Information Act, they have looked at every document except this one. He said he would just as soon give it to them tonight, but that it was up to the Council.

Councilor Eosco noted that they are in unchartered territory releasing the information to the investigator about their Executive Session already. She suggested that they just go for broke and release the document, noting that it's not going to share anything that the public doesn't already know and will just reinforce what everyone already knows.

**VOTE: 6 in favor, 2 opposed (Brackett, Paulhus)**

Chairman Wyman then asked City Solicitor Therriault about the letters he had sent. City Solicitor Therriault responded that potential investigators have all been contacted and asked to submit information in accordance with Council's discussion as to their qualifications, resumes, how they would conduct the investigation and cost.

Councilor Eosco asked if this information would be in their packets that they can look over and can make that information available to the public prior to the meeting.

City Solicitor Therriault responded that this would be up to the Council.

Councilor Sinclair stated he wanted to make a motion, which he wouldn't have thought necessary, but made it because he had read one of the pieces that was in the Press Herald a short while back and the insinuations in it – particularly the insinuation that unfortunately included the name of a City staff person. The insinuations in it need to be answered. He said hoped that the Council would agree that any e-mail exchanged by any Councilor, or the City Manager or the City Solicitor that dealt with the sale of the property be a public record and not a record over which the Council will exert any claim of privilege or exclusionary waiver.

City Manager Giroux responded that this has all been made available through the FOAA process and that the Press Herald has already taken advantage of this.

Councilor Sinclair pointed out that the problem was that only the City Manager's Office and the Press Herald know about this and insinuations in that particular publication might have led some of their readers to think otherwise. He explained that he is making this motion publicly that it can be agreed on publicly, and everyone would understand that it is the status quo. Councilor Eosco seconded the motion.

Chairman Wyman then called for preliminary Council comment and public comment.

Wayne Cappen of 1040 Middle Street stated that he has been watching this process and the discussion on the sale of the hospital. He told the Council that he felt they had made a courageous decision and expressed his belief that the building will be sitting empty within five years, and that the major tenants have already gone. He expressed his strong support for the City Council Chair and the entire City Council, the City Manager and the City Solicitor and said he couldn't sit idly by and watch a few disgruntled citizens crucify them for doing their job and that there is no reason to recall them for what they have been elected to do, which is to take care of the affairs of the City of Bath. He pointed out that the only way to change that is when it comes time to vote for somebody to vote them out. He said he has watched the Council co-operate, help each other, teach each other and support each other and said he is sick of watching a few people try to destroy them, concluding that there are many more important things the City needs to be taking care of. He expressed his belief that the City has gotten rid of a white elephant and has saved the City money in what would have cost thousands of dollars in maintenance costs. He concluded by thanking the Council for what they have been put through, have endured and have continued to give back to the City and to represent the City to the best of their abilities.

Craig Anderson of the Portland Press Herald asked if since they already paid to have the documents compiled couldn't anyone come in and look at them for free.

City Manager Giroux stated that he would look into the FOAA rules on that subject.

Michael Wischkaemper of 17 York Street seconded the suggestion to scan the aforementioned documents and put them onto the Web. He then reiterated the actions that have been taken thus far and again pointed out that they had never asked for an investigation, just that the questions be answered and information provided. He expressed his belief that the Chairman refusing to answer the questions with most of the rest of the Council following suit is what has led to this investigation. He concluded that he'd like to have Bath with better procedures, better processes and a more knowledgeable Council.

A discussion ensued between Chairman Wyman and Mr. Wischkaemper regarding events that had taken place.

Councilor Eosco then called a point of order regarding where they were in the meeting at that point.

City Clerk White stated that there was a motion on the floor made by Councilor Sinclair stating that all e-mails between everyone regarding this subject are open to the public and it had been seconded.

Councilor Sinclair clarified that the intent of the motion was just to make all e-mails exchanged by anybody on this subject to be made public.

**VOTE: 8 in favor - Unanimous**

Councilor Mitchell made a motion at 6:49 PM to go into Executive Session to discuss a Labor Negotiations matter per Title 1 M.R.S.A. §405(6)(D) and Councilor Lockwood seconded the motion. All were in favor of the motion.

Councilor Paulhus made a motion at 7:27 PM to come out of Executive Session. Councilor Lockwood seconded the motion. All were in favor of the motion.

The meeting adjourned at 7:28 PM with a motion from Councilor Merrill and a second from Councilor Sinclair. All were in favor of the motion to adjourn.

Attest:

Mary J. White, City Clerk

*Please note: These minutes are not recorded verbatim. A DVD recording of the meeting is available for review in the City Clerk's Office during regular business hours and on [www.townhallstreams.com](http://www.townhallstreams.com).*