

**REGULAR MEETING MINUTES  
CITY COUNCIL OF THE CITY OF BATH, MAINE  
Wednesday, October 2, 2013 6:00 PM  
City Council Chambers, Bath City Hall**

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

Also in attendance was 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.

**C. Public Hearings 6:01PM**

1) Ordinance: Chapter 5. Businesses, Article 9. Special Business Regulations, Section 5-96 Adult Businesses (second passage)

*A complete copy of this Ordinance is on file in the Bath City Clerk's Office with the Agenda materials for the 10/2/2013 meeting.*

Councilor Winglass made a motion to waive the reading of this Ordinance. Councilor Eosco seconded the motion. All Councilors were in favor of waiving the motion.

Councilor Merrill reiterated from prior meetings that she still felt the setbacks between the business and residences were too close.

Councilor Winglass said he felt the ordinance covered well all the issues.

**ROLL CALL VOTE on Ordinance:**

**YEAS: Brackett, Paulhus, Lockwood, Eosco, Sinclair, Mitchell, Winglass**

**NAYS: Merrill**

**Ordinance passed. 7-1**

Chairman Wyman stated this Ordinance would become law in 21 days.

Councilor Winglass made a motion to recess to workshop on the BIW TIF. Councilor Lockwood seconded the motion. All were in favor.

Councilor Winglass made a motion to go back into session. Councilor Mitchell seconded the motion. All were in favor of the motion.

**D. Consent Agenda 6:55 PM**

**\*2) Minutes of the previous Council meetings of September 4 and 18, 2013. (motion to Accept as Presented)**

Councilor Mitchell made a motion to accept the Consent Agenda as presented. Councilor Brackett seconded the motion. All were in favor of the motion.

**E. Time Devoted to Residents to Address the City Council 6:55 PM**

Michael Wischkaemper of 17 York Street spoke regarding the sale price of the Mid Coast Center for Higher Education. He said he sent e-mails to Council earlier in the day regarding the value of the old

hospital, which has hung up discussions for awhile. He stated that the City Manager, Bill Giroux, has the responsibility to inform the Council on real estate matters and should have informed the Council regarding the value of the property. He said he has received information that the old Bath Hospital was sold for considerably less than it was worth and that the Council and citizens should know it was sold for a “bargain” price. The Portland Press paid considerable money for a settlement statement that he said he was privy to. This is the document I emailed to you, said Wischkaemper, and it was not shared with City Council previously. It is dated May 31, 2013, the close date on the property, and has the City Manager’s signature. City documents show, also, that the City received another offer for the property during that May time period. If the City had sold the property for a higher price it would have been beneficial to taxpayers, he said. Wischkaemper said the City Manager did not inform the Council enough on the sale of the property and that the City Council should be better served by the City Manager.

## **Ordinances, Resolutions and Orders 7:00 PM**

### **3) Ordinance: LUC contract Zoning Amendment – Bath Iron Works (first passage)**

(The ordinance was neither read, nor waived of reading.)

#### **ORDINANCE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE LAND USE CODE OF THE CITY OF BATH ADOPTED JULY 19, 2000, AND SUBSEQUENTLY AMENDED, BE HEREBY FURTHER AMENDED AS FOLLOWS

**SECTION 16.18 – SOUTH PO2 CONTRACT ZONE, NUMBER 2** [Section added February 24, 2010, Amended 2013.]

#### **A. District Designation**

The property designated for this Contract Rezoning is a portion of the property located on Washington Street being identified as a portion of Lot 142 on City of Bath Tax Map 27 and a portion of Lot 165 on City of Bath Tax Map 32, dated April 1, 2009 April 1, 2013.

#### **B. Findings**

The property is located in the Industrial/Shipyard District (I). The City Council makes the following additional specific findings:

1. The building, presently known as the Pre-outfit 2 (PO 2) Building was constructed in 1986, underwent a major upgrade in 2004, and a 66,780 square-foot addition with a height of 106 feet in 2007. The addition in 2007 required the creation of a Contract Zone. This Contract Zone is contained in Land Use Code Section 16.14.
2. The building is used for industrial purposes.
3. The applicant now proposes to construct an ~~46,077~~ approximately 55,417 square-foot addition on the south side of the building. The addition is proposed to be ~~106~~ 110 feet in height.
4. Without the creation of a contract zone, the maximum height allowed in the Industrial District is 75 feet under the provisions of Section 8.14(C) of the Land Use Code.
5. Contract Rezoning is allowed on this parcel per Section 8.14(D) of the Land Use Code.
6. The applicant has offered the following voluntary, Discretionary Conditions in exchange for the Contract Rezoning: ~~For the Contract Rezoning the applicant will transfer the parcel of land at the~~

~~southeast corner of the Middle and Centre streets intersection—Lot 68-1, on City of Bath Tax Map 27, dated April 1, 2009, to the City of Bath.~~

a. The design and construction of streetscape improvements on Washington Street, from its intersection with King Street to the building addressed at 700 Washington Street, including the development of an esplanade/utility strip, relocation of curbing, widening and repaving of the sidewalk, and the installation of trees and bollards—as more particularly described in the application materials amended September 20, 2013 and submitted to the Planning Department.

b. The contribution of \$65,000 to the City of Bath for the purpose of enhancing the South End Park as deemed necessary by the City Council.

### **C. Zoning Provisions Affected**

This Contract Rezoning is intended to only modify the maximum height allowed, under Section 8.07(C) of the Land Use Code, by allowing the construction of the building addition 106 feet in height, depicted on the Site Plan approved by the Bath Planning Board on ~~December 15, 2009~~ September 3, 2013.

### **D. Conditions of Approval**

This Contract Rezoning Ordinance requires full and complete compliance with all conditions of approval, which are part of the Site Plan approval, granted to Bath Iron Works, by the Bath Planning Board on ~~December 15, 2009~~ September 3, 2013, including the following:

1. That the Conditions contained in Land Use Code Section 16.14 remain in force unless modified herein;
2. That the large doors of the Ultra Hall building be closed from sunset to sunrise;
3. That the evergreens and the white picket fence along Washington Street, between the street and be Bath Iron Works' property south of the South Gate, be maintained;
4. That the approval is contingent upon approval being granted by the Maine Department of Environmental Protection and that a copy of DEP's approval be submitted to the Planning Office; and
5. The Discretionary Condition listed in Section B (6), above.

Any proposed amendment to the above cited Site Plan Approval, which meets the requirements of Section 12.13 (B) may be approved by the criteria in Section 12.13 (B).

Councilor Sinclair made a motion to table this item for a month to give the Planning Board an opportunity to make changes. (There was no second.)

Councilor Sinclair said the contract that controls rezoning requires that any conditions in that proposed contract deal specifically with the physical element of the land. The proposed amendment has nothing to do with those requirements. Thus there is not enough information for the public or the Council until plans are further developed.

Councilor Lockwood asked what the specifics were in a conversation Councilor Sinclair had with Jim Hopkinson, a member of the Planning Board. She said she couldn't vote on something she had no knowledge of.

Councilor Sinclair said he couldn't respond to her question without a specific to respond to. The Statute that controls contract zoning is Title 30A, Sec 4352, sub section 8. It talks about how conditions that are

put in any proposed contract zone have to deal only with the physical development of the land in question. One of the conditions before us is that BIW open its checkbook and hand over \$65k. He said the idea behind contract rezones is not that one party can buy a change to the ordinance, but rather that the Planning Board and the City Council have opportunity to consider the public benefit from the specific changes that are being proposed and then decide if there is sufficient public benefit to warrant a departure from our normal ordinance.

Councilor Winglass asked if Andrew Deci, the City Planner, could address the Council on these matters because he (Winglass) was not ready to table the item.

Councilor Lockwood followed up by saying she thought the point of the documents the Council was reviewing for this meeting was what to determine what the best use of the \$65k would be. Councilor Sinclair said he wasn't sure that was the intent.

Mary White, City Clerk, reminded the Council they still had a motion to table the item, but nothing further.

Councilor Winglass made a motion to put this Ordinance on the floor for discussion. Councilor Eosco seconded the motion.

City Planner, Andrew Deci, the packet the Councilor's had were the results and decisions of the Planning Board and a revision with clerical error corrections were handed out to members before tonight's meeting started. BIW wishes to construct a five story building that is 110feet tall, located east of the south gate. Bath's zoning-shipyard industrial has a maximum building height of 75 feet. The contract zoning within the shipyard industrial zone allows BIW to seek changes in building height in exchange for public benefits. In order for this project to take place, two sites have been designated for improvements: 1) A set of improvements to the Washington St. Streetscape improvement from King St. to Mahogany Row; 2) Contribution to the South End Park improvements.

Councilor Merrill said that the building is going to be bigger thus making the area a non-desirable neighborhood to buy into. She wanted clarified the fact the height of the building would be offset by the \$65k from BIW. City Planner Deci said that is correct. Councilor Merrill said many of her constituents do not think that is enough money to offset the height of building since the area will be dramatically changed. It is shocking how much impact BIW has on this neighborhood, she said. Whatever the compensation is from BIW, it should be a true compensation and not just a "little bone". The values of the area properties will drop so I would like to see a more generous proposal from the shipyard, she said.

Councilor Eosco asked City Planner Deci if he had much feedback on this issue. He said at the two prior meetings of the Planning Board discussions included the two site plans and the contract rezoning. He said he didn't recall any questions from the public regarding the \$65k, only questions about the projects, not the cost. All abutting property owners received notices of the hearings, he added.

Councilor Winglass commented he had lived in the south end for 15 years and never felt BIW was a negative to the neighborhood, in fact many of them are proud of the fact they live there. The shipyard has been there for 100 years.

Councilor Mitchell concurred with Councilor Winglass saying he doesn't see a negative impact on the neighborhood. Everyone who moves to town knows the shipyard is there. There is no room left to build in the south end except away from the shore. So I don't see that as a force that's going to stop development. BIW does a good job of suppressing noise, especially in the evening, said Mitchell.

Councilor Merrill clarified she wasn't talking about new development, but retaining property values and equity of current homeowners and businesses.

Councilor Lockwood asked what she (Councilor Merrill) based her comments on that property values would decrease. Councilor Merrill reiterated that she hoped the new development by BIW did not decrease values of existing properties. Councilor Lockwood said she had a hard time seeing much difference between the height of the existing buildings and the new building in a rendering. Councilor Mitchell agreed.

Councilor Eosco asked how the allocation would occur for the \$65k. City Solicitor Therriault said he wasn't privy to how that would happen and should be looked into. You still have second passage when changes can occur.

Councilor Merrill asked for clarification on the items in Councilors' packets. City Planner Deci said renderings were sent to all on email because the packet materials were very poor.

**ROLL CALL VOTE on Ordinance:**

**YEAS: 7**

**NAYS: 1 (Councilor Sinclair)**

**Ordinance passed 7-1**

Chairman Wyman set second passage of the Ordinance for November 6, 2013 at 6:01 PM.

**4) Ordinance: LUC Contract Zoning Amendment – Plant Home**

Councilor Eosco left her seat at this time.

Councilor Mitchell made a motion to waive the reading of the Ordinance. Councilor Winglass seconded the motion.

**Vote on Waiving Motion:**

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

**NAYS: Lockwood**

**Motion passed. 6-1**

**ORDINANCE**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE LAND USE CODE OF THE CITY OF BATH ADOPTED JULY 19, 2000, AND SUBSEQUENTLY AMENDED, BE HEREBY FURTHER AMENDED AS FOLLOWS

SECTION 16.19 – PLANT HOME CONTRACT ZONE, NUMBER 2 [Section added 2013.]

District Designation

The property designated for this Contract Rezoning is a portion of the property located on Washington Street being identified as a portion of Lot 21 on City of Bath Tax Map 43, dated April 1, 2013.

Findings

The property is located in the Plant Home Zone (PH). The City Council makes the following additional specific findings:

The building is used for residential purposes.

The applicant now proposes to construct an unattached building to the south of the existing facility.

Contract Rezoning is allowed on this parcel per Section 8.22(D) of the Land Use Code.

The building is proposed to be 52 feet in height.

Without the creation of a contract zone, the maximum height allowed in the Plant Home Zone is 35 feet under the provisions of Section 8.22(C) of the Land Use Code.

The building is proposed to be setback 3ft from the property line.

Without the creation of a contract zone, the required setback in the Plant Home Zone is 20 feet (front, side, and rear) and 75 feet (from a waterbody) under the provisions of Section 8.22(C) of the Land Use Code.

The building is proposed to be within the yard area.

Without the creation of a contract zone, the required yard area in the Plant Home Zone is 20 feet under the provisions of Section 8.22(C) of the Land Use Code.

The applicant has offered the following voluntary, Discretionary Conditions in exchange for the Contract Rezoning:

Plant Memorial Home owns and undeveloped 1.30 acre parcel of land between Wing Farm Business Park and Ranger Circle in Bath, shown as Tax Map 24, Lot on the City of Bath Tax Map dated April 1, 2013. Plant Memorial Home will convey this parcel to the City or their designee for recreational and open space purposes.

Plant Memorial Home will construct a bus stop, as depicted on the approved site plan, on Washington Street.

An existing driveway entrance, as depicted on the approved site plan, will be closed.

Plant Memorial Home will replace existing light fixtures on the leased parcel with ordinance-compliant fixtures.

#### C. Zoning Provisions Affected

This Contract Rezoning is intended modify:

The maximum height allowed, under Section 8.22(C) of the Land Use Code, by allowing the construction of the building addition 52 feet in height, depicted on the Site Plan approved by the Bath Planning Board.

The minimum setbacks, under Section 8.22(C) of the Land Use Code, by allowing the construction of the building, depicted on the Site Plan approved by the Bath Planning Board.

The minimum yard area, under Section 8.22(C) of the Land Use Code, by allowing the construction of the building, depicted on the Site Plan approved by the Bath Planning Board.

#### D. Conditions of Approval

This Contract Rezoning Ordinance requires full and complete compliance with all conditions of approval, which are part of the Site Plan approval, granted to PMH Real Estate, by the Bath Planning Board on August 20, 2013, including the following:

The Discretionary Condition listed in Section B (6), above.

Any proposed amendment to the above cited Site Plan Approval, which meets the requirements of Section 12.13 (B) may be approved by the criteria in Section 12.13 (B).

Councilor Eosco took her seat at this time.

Councilor Mitchell said it was recommended by the Planning Board to proceed with this ordinance.

Councilor Winglass asked the City Planner to speak on the ordinance.

City Planner Deci explained this was another contract zoning request. PMH Real Estate wants to build another building and two stand-alone units. Three issues seeking remediation are 1) setbacks, 2) yard area, and 3) height. Public benefits being offered by PMH in exchange for the issues: access to the southern point of the property; the development of a bus stop on Washington St.; and the gift of land at adjacent to Wing Farm for use as open space.

Councilor Winglass asked that the City Planner explain more about the bus stop. City Planner Deci said it is actually a pull-off so traffic can proceed past the bus when it stops. It would be south of the existing Plant Home.

Councilor Sinclair asked for an explanation of the lot over which there is leasehold and the relationship of the owner and the abutter to setbacks. City Planner Deci said he would let the owner respond to the real estate ownership and relationship between the two.

I'm Tom Saucier with Site Design Assoc., the Civil Engineers for the project. I'll let Don Capoldo speak to the relationship, but the situation you mention regarding the three-foot setback should not present any problems.

Don Capoldo of the Plant Home explained that both pieces of property are owned by the Plant Memorial Home. The 2.38 acres is where the Plant Home is now leased under PMH Assisted Living Assoc. The second lot of 28 acres will be leased to PMH Real Estate. The lease Councilor Sinclair is referring to will revert to Plant Memorial Home at the end of its lease.

Councilor Sinclair stated that he would be abstaining from the vote.

Councilor Merrill asked City Planner Deci if he heard anything from neighbors of the Plant Home. He said over the past four years, there seems to be some anxiety amongst residents. Neighbors from East Lane attended the last Planning Meeting and expressed concern over traffic and sewer – related issues, but the majority of the neighborhood seems to have a general support for the project.

**ROLL CALL VOTE on Ordinance:**

**YEAS: Brackett, Merrill, Paulhus, Lockwood, Eosco, Mitchell, Winglass**

**NAYS: None**

**ABSTAIN: Sinclair**

**Ordinance passed: 7-0-1**

Chairman Wyman set second passage of the Ordinance for November 6, 2013 at 6:02 PM.

**5) Order – Prepare Election Warrant to notify inhabitants of the City of Bath of a State Referendum Election to be held on Tuesday, November 5, 2013. (motion to pass Order)**

Chairman Wyman read the following Order:

**ORDER**

In City Council  
October 2, 2013

**BE IT HEREBY ORDERED BY THE CITY COUNCIL, AS FOLLOWS:**

That, the Notice of State of Maine Referendum Election be prepared and issued to notify and summons the inhabitants of the City of Bath, qualified to vote, that the Referendum Election will be held at Bath Middle School, 6 Old Brunswick Road, on Tuesday, November 5, 2013 for the purpose of determining the following questions:

**Questions To Be Voted On:**

**Question 1: Bond Issue:**

Do you favor a \$14,000,000 bond issue to provide funds for the State’s share of maintenance, repair, capital improvement, modernization and energy efficiency projects for Maine Army National Guard readiness centers and support facilities and the purchase of land for training and to draw down federal matching funds?

**Question 2: Bond Issue:**

Do you favor a \$15,500,000 bond issue to enhance educational and employment opportunities for Maine citizens and students by updating and improving existing laboratory and classroom facilities of the University of Maine System statewide?

**Question 3: Bond Issue:**

Do you favor a \$100,000,000 bond issue for reconstruction and rehabilitation of highways and bridges and for facilities or equipment related to ports, harbors, marine transportation, freight and passenger railroads, aviation and transit, to be used to match an estimated \$154,000,000 in federal and other funds?

**Question 4: Bond Issue:**

Do you favor a \$4,500,000 bond issue to provide funds for a public-private partnership for a building project for a new science facility at the Maine Maritime Academy to be matched by other funds?

**Question 5: Bond Issue:**

Do you favor a \$15,500,000 bond issue to upgrade buildings, classrooms and laboratories on the 7 campuses of the Maine Community College System in order to increase capacity to serve more students through expanded programs in health care, precision machining, information technology, criminal justice and other key programs?

A person may register to vote and/or enroll in a political party on or before election day. Pursuant to Title 21-A, Section 759(7), absentee ballots will be processed on November 4, 2013 at City Hall Auditorium beginning at 9:00 AM until finished. Any and all remaining absentees received on election day, November 5, 2013, will be processed from 5:00 PM-8:00 PM at the Bath Middle School, 6 Old Brunswick Road.

The polls shall be opened at 8:00am and closed at 8:00pm.

Councilor Mitchell made a motion to put the Order on the floor for discussion. Councilor Paulhus seconded the motion.

**VOTE on Order:**

**Yeas: 8**

**Nays: 0**

**Order passed unanimously. 8-0**

**6) Order - Prepare Election Warrant to notify inhabitants of the City of Bath of a Municipal Election to be held on Tuesday, November 5, 2013 to vote for the following: One Councilor from each: Ward 5, Ward 7 and At Large (three year terms) and One Referendum Question. (motion to pass Order)**

Chairman Wyman read the following Order:

**ORDER**

In City Council  
October 2, 2013

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH, THAT:

Warrants be prepared and issued to notify and summons the inhabitants of the City of Bath, qualified to vote, that the Municipal Candidate/Referendum Election (Wards 1-7) will be held at Bath Middle School, 6 Old Brunswick Road, on the Tuesday following the first Monday of November, the same being the 5<sup>th</sup> day of said month, in the year of our Lord Two Thousand Thirteen, at 8 O'clock in the forenoon, then and there, to cast their votes at the Municipal Election in their respective Wards for:

**City Councilors to be Elected:**

Ward Five	One to be Elected for a three year term
Ward Seven	One to be Elected for a three year term
Ward At Large	One to be Elected for a three year term

**Referendum Bond Ordinance – Question One**

“SHALL A BOND ORDINANCE BE AUTHORIZED IN AN AMOUNT UP TO, BUT NOT TO EXCEED, \$2,500,000.00 FOR THE PURPOSE OF FUNDING CITY STREET REPAIRS AND IMPROVEMENTS?”

and, be it further ordered, that said polls are to be kept open until eight o'clock in the afternoon of said day and then be closed.

Councilor Mitchell made a motion to put the Order on the floor for discussion. Councilor Paulhus seconded the motion.

Councilor Winglass asked to waive the reading. Councilors Lockwood and Sinclair against waiving.

Councilor Winglass asked if this is the way the bond will be written, and if so, he thought it should be more thorough as far as the payback. City Clerk White said the treasurer's statement will be available for all voters and is a more detailed look at the bond.

**VOTE on Order:**

**Yeas: 8**

**Nays: 0**

**Order passed unanimously. 8-0**

**7) Order - Prepare Election Warrant to notify inhabitants of City of Bath of the RSU #1 School Districts 1 and 6 Board of Directors'(three year terms) and One Referendum Question Election to be held on Tuesday, November 5, 2013. (motion to pass Order)**

Chairman Wyman read the following Order:

**ORDER**

In City Council  
October 2, 2013

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH, THAT:

Warrants be prepared and issued to notify and summons the inhabitants of the City of Bath RSU #1 School Districts 1-7, qualified to vote, said Election will be held at Bath Middle School, 6 Old Brunswick Road, on the Tuesday following the first Monday of November, the same being the 5<sup>th</sup> day of said month, in the year of our Lord Two Thousand Thirteen, at 8 O'clock in the forenoon, then and there, to cast their votes for:

**BOARD OF DIRECTORS FOR RSU #1 TO BE ELECTED:**

District 1                      One to be Elected for a three year term  
District 6                      One to be Elected for a three year term

**QUESTION 1:**

Do you favor authorizing the board of directors of Regional School Unit No. 1 to issue bonds or notes in the name of this regional school unit for school construction purposes in an amount not to exceed \$5,200,000 to fund renovations, upgrades, and improvements to Morse High School, Bath Regional Career and Technical Center, Bath Middle School, Dike Newell School, Fisher Mitchell School, West Bath Elementary School, and Phippsburg Elementary School.

and, be it further ordered, that said polls are to be kept open until eight o'clock in the afternoon of said day and then be closed.

Councilor Mitchell made a motion to put the Order on the floor for discussion. Councilor Eosco seconded the motion.

**VOTE on Order:**

**Yeas: 8**

**Nays: 0**

**Order passed unanimously. 8-0**

**8) Order - Appointment of Wardens and Ward Clerks for the November 5, 2013 Election. (motion to pass Order)**

Chairman Wyman read the following Order:

**ORDER**

Be It Ordered by the City Council of the City of Bath, that the following be appointed for the Maine State General/Referendum Election and the City of Bath Municipal Candidates Election to be held on Tuesday, November 5, 2013.

<b>Ward</b>	<b>Warden</b>	<b>Ward Clerk</b>
1	Barry Compton	Margaret Gabelmann
2	Christina Hagan	Sandra Kaler
3	Mary Arsenault	Joan Ingersoll
4	Darlene Compton	David Kaler
5	Cindy Gabelmann	Judith Lemoine
6	Brenda Cummings	Timothy Richter
7	Aaron Park	Carla Burnham

Councilor Mitchell made a motion to put the Order on the floor for discussion. Councilor Eosco seconded the motion.

**VOTE on Order:**

**Yeas: 8**

**Nays: 0**

**Order passed unanimously. 8-0**

**9) Order - Setting hourly schedule of the Office of Voting Registrar. (motion to pass Order)**

Chairman Wyman read the following Order:

## ORDER

Be It Ordered by the City Council of the City of Bath, that the hourly schedule for the office of the Registrar of Voters shall be from 8:30am to 4:30pm Monday through Friday prior to the State of Maine Referendum Election and City of Bath Municipal Candidate/Referendum Election to be held Tuesday, November 5, 2013 except for Saturday, October 26, 2013 from 11:00am to 2:00pm at the City Clerk's Office, 55 Front Street.

Voters may register on the Day of the Election from 8:00AM to 8:00PM at the polls at the Bath Middle School, 6 Old Brunswick Road.

Councilor Mitchell made a motion to put the Order on the floor for discussion. Councilor Eosco seconded the motion.

### **VOTE on Order:**

**Yeas: 8**

**Nays: 0**

**Order passed unanimously. 8-0**

City Clerk White announced that absentee balloting would begin on Monday, Oct. 7, 2013.

### **G. Petitions & Communications 7:45 PM**

There were no petitions and communications.

### **H. City Manager's Report 7:45 PM**

Marc Meyers reported the City's redesigned web site will be going live on Monday, October 7<sup>th</sup>. He said, hopefully, it will provide more ease in contacting individuals, email access, city news alerts, etc.

Meyers also invited all to the 15<sup>th</sup> annual Citizen Involvement Day & Greater Main Street Autumfest, Saturday, Oct. 12. CID awards will be handed out around noon.

### **I. Committee Reports 7:49 PM**

Councilor Winglass stated that the Finance Committee will be meeting this month and will be reporting to council next month.

Councilor Sinclair asked about an update on the wireless communications for the City.

Committee Councilor Lockwood stated that the committee has been meeting monthly and they are still trying to find the best option for the citizens of Bath. She said many companies have made presentations on various models for communities and the goal is to find what fits best for Bath and keeping any costs from the taxpayers.

Councilor Mitchell said the committee is getting a good idea of the wealth of information that's available. (Peter Alexander and Carolyn Lockwood are co-chairs of the committee.)

### **J. Unfinished Business 7:50 PM**

Councilor Lockwood made a motion to switch Item 10 and Item 11. Councilor Eosco seconded the motion. All were in favor of the motion.

## 11) Elm Street Bell (Verbatim Transcription)

Councilor Lockwood: Yes, I can talk about the Elm St. bell. I've had several communications from residents near the Elm St. bell and we talked about it during our budget meetings. Petitions were collected by a business owner/ resident near the Elm St. bell. Those were given to the Council, I believe, at the August meeting or the mid-July meeting. No one was present at the time to discuss the issue so I believe the resident/business owner is in the audience now to talk about it.

*(... denotes pause in speech.)*

Shadi Towfighi: Thank you for having me again. Another neighbor, Amy, was supposed to be here, but she might be a little bit late. I have forwarded all the emails that my guests have been emailing me regarding the disturbance at night that they have and they really and truly can't go to sleep. The bell does keep them awake and it keeps me awake, too, worrying are the guests going to go to sleep; is the guest going to be happy for the amount of money they are paying to me; and my guests still come to the inn because of the inn. They do not come here; I'm sorry to say this, because of the town of Bath because I do offer an inn that has no TV, has no radio, and I do market this and talk about it. It's a place that you go to to let go of things. So far, for this year everyone was very, very happy about it, but recently I have been getting, not necessarily, negative reviews about the inn, but about the bell disturbing them. In fact, I had the Boston Globe, they contacted me, they were going to come and write about the bell and I brought it to Jennifer Geiger's and she actually asked me to actually ask the Globe not to come because she thought it would be a negative review on the City, therefore, I asked, and this was a very well known reporter, I asked him not to come because I did not want a negative review about the town. And all I am asking is to please stop the bell from 9-9. I'm not asking to stop the bell completely. Last time I was here, in June or Dec. of last year when we had a meeting and brought to the attention to the Council members. And Mary mentioned when I bought the property the bell was there. The bell was there, but the sound was not as loud as it is now. The sound has become much, much louder – it used to be much more quiet, it wasn't as loud as it is now. Even with the windows closed, it is really, really loud. Even the guests who are in the rooms facing the Park are sometimes bothered by it. So it has become a big, big issue for my business. In fact for October, when people call, I've been telling them the rooms that are closer to the bell – I've been telling them that this is the case and quite a few number of them have canceled. I cannot afford that because this is my livelihood. I don't have money somewhere else to pay for the tax and the tax keeps going up. I'm getting no benefit out of this. All I am doing is to give, give, give and I can't afford it anymore. It's becoming really, really difficult. So, I am not asking the City to do it for me, I'm asking it for my business, the business that brings some kind of money to this town. When guests come here they go to the restaurants here, they go to the shops here, they go to other places here. In fact I had a couple of guests who were really interested in purchasing the property, but decided against it once they slept over the night, they thought oh no they can't do this, they can't sleep overnight with this loud noise. I do understand that some people want it on all throughout the night, but they are.... I'm right next to the bell, right next to the bell and it's really, really, really loud. It's extremely disturbing. My guests, a couple of them, during the summertime, left. Again, during summertime if I have the central air conditioner on some guests are happy and some want it off, they want the fresh air. Again, that's a complex issue, there is no way I can make them happy with that loud, loud piercing sound. I went and researched this on World Health Organization as well. There is a standard for sound and this is much louder than regular sounds that can be OK to the ear. I have tried ear plugs as well, I purchased them and given them to the guests and they have not been happy with that either. There's been absolutely no way to make my guests happy regarding the bell. And I forwarded all the emails as much as I could to every single one of you. It's not that I just forwarded them to Carolyn. And there are quite a few numbers that have promised to email me but they just haven't had the time.

Councilor Merrill: You were mentioning the fact that ... promised to email you. Are you soliciting comments regarding the bell or is it spontaneous?

Shadi Towfighi: No, it's actually spontaneous. I haven't been asking them. In fact, as I mentioned, the Globe contacted me as soon as the article was written in the Coastal Journal in January I think it was, or in December. The Globe contacted me and said that they wanted to come and write an article about the bell and the inn. So I was all excited and I said sure come and I brought it to Carolyn's attention and Carolyn said that's great – have them come. And then I brought it to Jennifer's attention, Jennifer Geiger, and she said oh no, no, no please tell them not to come because it's really, really bad. It's going to be a negative article for the town. So in thinking of the town, I said no. I never solicited anyone. Whoever comes to me, they find out about it and then they come... The only thing I did was collect a few petitions and then I fell, my knee got injured, and then the season came, and I got busy with the (*inaudible*) and all those things and I wasn't able to collect more petitions. In fact I've been talking to people and they say sure they'll sign it. People as far as the other end of town.

Councilor Mitchell: I believe there is some history with this bell. The City, I believe, had the bell checked out to see if it could be silenced or toned down or altered or whatever. Could somebody in here refresh our memory as to what the finding of this was, the upside and the downside both.

City Manager Giroux: We did get an estimate from the company that maintains the clock and you'll recall they recommended against modifying the clock, but they did give us a price. Mike Peabody, do you remember what the price was?

Building Maintenance Supervisor Peabody: Yes.

City Manager Giroux: How much?

Peabody: \$15,000.

Councilor Mitchell: To do what?

City Manager Giroux: To fix it so - we can shut the bell off for nothing - this would fix it so it only rang whatever hours we decided.

Councilor Mitchell: I suggest shutting the bell off would not be a real good idea.

Councilor Brackett: Mike, does that same letter..., didn't the letter warn against ....they said they could do it, but it also went into pretty good detail about the history of that timepiece and advising we not do that to that timepiece. If I recall, correctly.

Peabody: Yes, it did. In the second paragraph it says we do not recommend installing an a.m./p.m. system on a 160-year old timepiece, especially on one with such historical and hierological value.

Councilor Brackett: That was the part that bugged me the worst...the expert said you shouldn't do it.

Shadi Towfighi: So, why not? What damage is it going to do to the clock?

Peabody: I don't know. I'm not a time expert either. I just reset and maintain it so it works. That's my part of it.

Shadi Towfighi: OK. Is it going to damage it historically? (Peabody gives Shadi a copy of report.)

Councilor Lockwood: Yes, that's what I would infer from that note.

Councilor Merrill: There was the additional issue that the bell would have to be removed in order to put such a mechanism on it which could result in further costs on it. And as we have discussed before, the suggestion, if you were in favor of something like that, it's your business that is affected by it that perhaps the City and your business could split the cost on it, but you had not been favorable to that. I don't know

that that is a proposal the Council would support, but it's something I had thought of. But, it's clearly a large issue. I had thought of well, maybe we should just shut the bell off for the sake of a business that is clearly a benefit to the City. The problem in my own thinking, as I understand it, your business is for sale?

Shadi Towfighi: It is.

Councilor Merrill: If we turn it off, and then at some future point wanted to turn the bell back on then we have a problem with a business owner who says what bell. Hopefully, now everybody's heard about it. I'm not sure how that would come back to haunt Council if we turning it off, turning it on, turning it off.

Shadi Towfighi: Regarding that you know first you mentioned to me that maybe I could give the money for the bell to be brought down and then fixed – all of that stuff – I brought it to Carolyn's attention; Carolyn says you know I pay tax and it's the City's responsibility to take care of that, I pay tax and get no benefit out of the tax so it's the City's responsibility to fix it, not mine. I don't have such a money to give for the bell to be brought down and be fixed and all that stuff. I don't have that kind of money and I shouldn't have to do it. That's one thing and, as I mentioned, just right now, I had guests who were really interested in purchasing the inn, but once they slept a couple of nights, not just for one night, they decided against it because the bell is highly disturbing. It is highly disturbing. It is very, very loud. It's not like a nice quaint sound, and the inn is right next to it.

Councilor Lockwood: Is there any other public here to speak?

Amy Kerr: Hi, I'm Amy Kerr. I live at 857 Washington St. which is right next to the church and I can reiterate that it is very loud. The bell is ...it doesn't impact a huge number of people because there aren't that many residences right around the church, but for those of us who are there it has a huge impact on us. We cannot really have guests stay at our home anymore. I guess I feel like I've gotten used to it enough now and can mostly sleep through the night, but I'm worried about what it's done to the value of my property. I don't know for sure but it sure seems that bell must be breaking some sort of noise ordinances for the City in the late night hours. It's a hard issue for me because bells are beautiful and I love them during the daytime – it's only an issue for me at night. I strongly agree with Shadi that those of us that are impacted by the bell, it is a significant issue.

Shadi Towfighi: And I'm not asking for it to be shut down completely, either. Just like Amy, I really like it during the daytime. It is beautiful, it is wonderful, it is very specific to small towns, that's why I came here, that's why I bought this property, that's why I spend so much money on it because of the town, because of the setting, because of the bell, because of the waterfront, because of so many different things.

Chairman Wyman: We have some Councilors who have questions.

Councilor Lockwood: Mike can you come back up to the podium. I know you've discussed this with Balzer for years. When you talk to them do you ask them about some dampening effect. You'd done that before, before I was on the Council. And I don't know if those are things that were recommended by them or if ...

Mike Peabody: I had got recommendations from them as to how to do it. They had never done it before, so they really didn't know how to do it. So we kind of together came up with the idea of putting up a piece of rubber between the strike and the bell. And as I reported months ago, it didn't work.

Councilor Lockwood: I just wanted to clarify that that is what the clock company...thanks.

Councilor Winglass: I would like to propose that we get back in touch with this expert clock company; it seems that none of us are experts here as far as the clock goes and the bell and find out exactly what their recommendation is precisely as to whether or not how a timer would work or if would be their recommendation that we turn the thing off and then that becomes a debate again because right now we

are just going around and around with this. And realistically, I can sympathize with both of you as far as the sound goes, but when we make a decision on the bell it's going to come down, one of the things that I'll need to make the decision is – I'm not going to damage the bell, in other words. So whatever needs to be done in that respect I think we all need to know the answer to before we can make the decision. That's my recommendation.

Councilor Brackett: I think we already have that information. Would you (Peabody) mind just reading that letter to us, that part. I recall it being clear enough to where it bugs me that, like wow, they are saying .....

Councilor Winglass: I know what you are saying, but I don't know if it was that specific, you know, and if the company is going to say that they don't recommend it and we can damage the bell, that's all I'll need to hear. One way or the other, you can turn it off and then the debate becomes do you turn it off or do you leave it alone, basically.

Councilor Brackett: That is right, that is what it comes down to.

Mike Peabody: Let me read the whole letter. (Letter is available with agenda package in City Clerk's office.)

Councilor Brackett: So to me that causes me further concern, in other words the bill is open ended. Correct, said Peabody. In other words we would have no idea of what we would end up with if we went down this road. (Correct, said Peabody.) On top of they've already said don't do it. They recommend don't do it.

Councilor Winglass: Which means there is no guarantee.

Councilor Brackett: That's what they're saying.

Councilor Paulhus: I understand that we've looked at ways with the bell. Is there anything that we could do, say, around the bell? Like some kind of sound barrier sort of. I don't know is there anything that would kind of help deafen the loudness of it?

Mike Peabody: Well I had actually talked to Scott Davis (Codes Officer) since he's a musician, too, think of like a coronet or trumpet that has a mute put in it. He didn't think that would work because with a horn it's blowing air and with this it's more like a drum. To dampen the sound of a drum it wouldn't work. I had thought of stretching something across the bottom and filling the bell up with, say peanuts or Styrofoam or something like that to see if that would work and he did not think that would work.

Councilor Paulhus: I understand. What about like around the bell and not actually the bell itself. Is there anything that could be done around the bell that could .....

Councilor Mitchell: Like the walls built around it.

Councilor Lockwood: You mean like louvers or something?

Mike Peabody: I had tried, what I had done was taken an inner tube at different thicknesses, because it was real thin, it was a large piece so I could make it thicker and as I made it thicker and thicker, the sound did not change of the bell. Then finally I got it so thick it made no sound. So it was either on or it was off with that. I don't know if you surrounded the whole bell if you could quiet down the vibration of the bell. I don't know that.

Councilor Lockwood: Are you talking about on the tower on the cupola, not the bell itself? But on the structure? On the cupola where there's an arch, an open archway. I think every other one, looking at a picture on here (computer), is solid and open. (Correct, said Peabody.)

Councilor Lockwood: I know that's going to affect the architectural integrity of the building as well but it could be reversible.

Councilor Paulhus: Like the thickness of plastic or something – I don't know.

Councilor Brackett: Like a panel of some kind.

Councilor Paulhus: Yes, of some kind. So you're not actually touching the bell. Something maybe that can help lowers the sound that it's making. I don't know if that's been looked at.

Mike Peabody: They do have sound barriers. To be honest with you I have never thought of doing that because it would be changing the whole structure and everything up there.

City Manager Giroux: Well we can look at it. We can talk to Andrew about that historic piece. I think it's a good idea – let us look at it and get back.....

Councilor Lockwood: The lexan, I've done that on mine.

Mike Peabody: The lexan wouldn't deaden the sound. They have sound barrier board that ...

Councilor Lockwood: We don't want it to be gone. I mean ...I'm sorry, but. (Right, said Peabody.)

Jim Strickland: I'd like to put my two cents in here. You know where I live, 4 Park St. Not a thousand feet from here we have Bath Iron Works, we're one of the most advanced Navy ship ever built and it's , what, a three billion dollar or something like this piece on these. We have a ridiculous amount of engineering talent down there. A lot of these people live in the area. We have dozens, scores of sound engineers. If someone actually just asked, and I can do this if you want, I can ask our sound engineers, I guarantee you there is a solution here. It doesn't require retrofitting a bell, I'm sure it's not necessary ( inaudible) ....this 14,000 ton ship has the sound signature of a motor boat. I've no doubt we can solve this problem. And may be very easy, all you have to do is ask. So, I will do it if you ask me to, but I'm pretty sure it's somewhat feasible. Good Day.

City Manager Giroux: We'll look into it.

Jim Strickland: Sorry. My good friend Mr. Wischkaemper reminded me that the cost to the city would be zero. Guaranteed to be free. I'll cover all costs. Good day.

Unidentified Woman in Audience: I have a question. How hard is it to switch the bell off? Is it literally just a switch? I mean would it be possible to turn it off at night and then turn it on again in the morning or is that totally unrealistic?

Mike Peabody: It would involve climbing up into the bell tower every signal time you turn it on and off. Can it be done? Absolutely, but it has to be physically done.

Councilor Eosco: I've been in that bell tower. You don't want to go there.

Councilor Lockwood: So could we get more information from Mike and the staff look into some ideas.

Chairman Wyman: Well, we just had an offer.

Councilor Lockwood: Well that would be up to staff... I don't think.....can staff look into.

Chairman Wyman: We've had an offer. Let Mr. Strickland look into it.

City Manager Giroux: Yeah, let him look into it. He's offered to do it for nothing.

Councilor Paulhus: I think all options are out there. If anybody can find anything and bring it back to us, is good to hear.

Councilor Mitchell: Whaever it is, it's got to come back with a guarantee it's not going to harm that bell.

Peabody: I'm fine with that.

### **10) City of Bath Council Investigation (Verbatim Transcription)**

Chairman Wyman: We had replies from a Kelley, Rummell, and Zimmerman; Robert Crowley; Eaton Peabody; Don Garrish; Trub Heisler; Jonathan Goodman; Joseph Field said no; Ervin Snyder said no ...

City Solicitor Therriault: He perceives he has a conflict.

Chairman Wyman:... and Pierce Atwood. Has everybody read the resumes and got any suggestions?

Councilor Mitchell: Wasn't Ted Hoch a part of that, too? Ted Hoch was also sent in...

Councilor Brackett: Didn't he state he had no real estate experience or something like that?

Councilor Winglass: Right and he'd been an attorney for 30 or 40 years.

Councilor Mitchell: I just want his name thrown out there cause the rest of them were.

Councilor Lockwood: Although someone might not have real estate experience, this person seems to have a lot of investigative experience which seems to be the most important portion of an investigation as investigative experience and also without real estate experience they may have less of a bias. I don't know, sometime when you have less of a bias, or I don't know, just to look at it as a pure investigation of the facts.

Councilor Mitchell: Well, I don't know it's food for thought. We've thrown all the information out there. Everything we've got is public, but we still need an investigation.

Chairman Wyman: No, nobody want to make a suggestion? David have you got any suggestions?

Councilor Sinclair: Well, Mr. Chairman we find ourselves at the exact same point we were at the first time we discussed this which was having to figure out what evaluation criteria we use to select someone, if in fact we go forward with our commitment to have an investigation done. Cost should obviously be a factor, experience should obviously be a factor, lack of connections to any of the personnel involved should obviously be a factor. I don't know what all the factors are. I'm hopeful some other members of Council would have some thoughts on that. And we would agree on a set of factors to consider and then apply them to the applications we've got in front of us.

Chairman Wyman: We're at a stalemate.

Councilor Merrill: I would just say based on exactly those things we pick somebody. You know I read through all of these and we're going to get criticized for cost, we're going to get criticized for bias, (Councilor Brackett: we are) you know we're stuck, but we have a job to do and based on what's here. I'm again shocked at how much lawyers legal services are, but I'm looking at experience and someone who's least likely to be considered biased. You know, I would say that Robert Crowley, based on the things that came in, he seems to have everything we are looking for and I liked that he quoted what we were looking for and asked to go beyond the bounds if that's where the investigation led. You know that's the type of person we are looking for so he just wasn't ... (inaudible) that we mentioned but instead said, I will read, "That if selected I would be willing to serve as investigator under the condition that I would be authorized to determine how the investigation is be conducted, in other words I would follow the evidence where it leads." That's the type of person I want doing this. I would just put his name forward and say let's get on with this.

Councilor Sinclair: I would happily support that.

Councilor Lockwood: I support that as well.

Councilor Mitchell: I do, too.

Councilor Brackett: We definitely don't need to drag this out any further.

Councilor Merrill: I'd like to see anybody come forward and criticize someone with his type of experience.

Councilor Mitchell: Why don't you put that in the form of a motion.

Councilor Merrill: I move then that we select and hire Robert Crowley for the purpose of this investigation.

Councilor Sinclair: I second it.

Chairman Wyman: Are there any preliminary Council comment?

Manager Giroux: If I could add, just before you do public. We have a draft of an order – if you remember the realtor said he wanted to be released by Council before he spoke to the investigator, so if you choose to move forward with an investigation, I'll pass this around, Roger (Therriault) drafted it, but I would suggest that the Council then consider the order releasing Mr. Spann to talk to the investigator. But you should still move forward with the original motion. I'm sorry.

Councilor Eosco: I have a question. Going back to Crowley, I don't really understand the fee schedule. Is it a two party case, is it a four party case. You know I'm definitely concerned about the price tag on this. Just for instance, there are some great courses that we could take as councilors that the city would normally pay for and we've been told that we would probably have to pay for them ourselves because so much of our money is going toward other things this year from the contingency fund. So, I'm really concerned about cost. I don't know how to read this, I don't know what this is. Can anyone answer that? Roger, anyone? Is there an attorney in the room?

Councilor Sinclair: The judge indicated in his letter, I believe, if I'm remembering right, that he was amenable to the Council setting a cap. Is that how you remember it Roger?

City Solicitor Therriault: I haven't read them?

Councilor Sinclair: You haven't read them?

City Solicitor Therriault: I have not read them, purposely.

Councilor Sinclair: OK

Councilor Lockwood: Yet the Council can set financial limits on the investigation to ensure that the expense of the process does not get out of hand.

Councilor Eosco: Are we going to do that tonight? Try to put a cap on that?

Councilor Winglass: That's actually, probably not a bad idea. In that way we can just wrap this thing up and get it going. And then we'll know, for instance, your concern of the cost. Some of the other ones were a little more discernible in their cost and his was a little bit, somewhat, vague. However, in the end, none of them would be cheap and I agree that we are burning through Council contingency and the year is fairly new and that is just going to mean....., depending on how the rest of the year goes, that we will not have flexibility in other matters perhaps, but to me that is a different issue when in fact we need to further move along. That is something we'll all have to watch.

Chairman Wyman: We've got a motion and a second on .....Is there any public comment?

Michael Wischkaemper: I support the motion. I also support the order that the City Manager has proposed to make sure that Mr. Spann can answer questions.

Chairman Wyman: Any other public comment? I'm going to call a roll call vote.

**VOTE on Order:**

**YEAS: 8**

**NAYS: 0**

**Order passed unanimously. 8-0**

Chairman Wyman: And now we have an order.

## **ORDER MIDCOAST CENTER PROPERTY TRANSFER**

In view of the pending investigation regarding the sale of the Midcoast Center Property, in order to provide all possible information to the Investigator, in light of the confidential relationship between a Buyer and the Buyer's Broker in the transfer of real estate, and at the request of the Broker's Attorney, it is hereby ordered by the City Councilor the City of Bath that all aspects of confidentiality and privilege relating to the sale of the Midcoast Center Property by and between the City of bath and its Broker, Donald Spann, are hereby waived and Mr. Spann is hereby authorized to fully cooperate in the investigation, provide information and documentation as requested by the Investigator, and to otherwise facilitate the investigation without restraint.

SO ORDERED by the Bath City Council this 2<sup>nd</sup> day of October, 2013

Councilor Brackett made a motion to put this order on the floor for discussion. Councilor Lockwood seconded the motion.

Chairman Wyman: Any preliminary Council comment?

Councilor Sinclair: I think, and I hope, we have made it abundantly clear that we are comfortable with waiving any and all privilege with respect to that transaction including Mr. Spann, including anyone and everyone else. So I have no problem supporting that.

Chairman Wyman: Is there any public comment? Any final Council comment? All those in favor.

Unanimous: All in favor.

Councilor Eosco: I would like to make one more motion. I'm just trying to set some sort of, for us to know and for the public to know, what ballparks we're talking about for cost. It doesn't mean we can't exceed it, but I think we should know when we are coming near a limit. We've been chit-chatting over here. I'm thinking \$5,000 in my mind.

Councilor Brackett: That's exactly what I had on my mind.

Councilor Eosco: So I make a motion we put a \$5,000 holder on this, holder's not really a technical work, cap and it will come back to Council perhaps if we need to go over that cap.

Chairman Wyman: Make that in the form of a motion?

City Clerk White: That's what she did.

Councilor Brackett: I'll second that.

Chairman Wyman: Motion made and seconded. Any preliminary Council comment?

Councilor Merrill: I don't think we can put anything like that on here. I think that certain members of the public have made their interests very clear that they want a thorough investigation. We have to trust that the person we are hiring for this, with the experience he has, is going to recognize that this is City funds and this is the taxpayers money and nobody wants to pay more than they have to and the purpose here is to help the public not harm it and I think we have to go (inaudible).. I don't see how putting any specific amount out there. I just don't see how that's possible to even do that and then call this, you know, a thorough investigation. I don't now how we limit it and say we did our jobs.

Councilor Eosco: I suppose that in my mind I'm just trying to get these numbers ...there are so many hidden costs gone on with this. The number of hours the staff has put in, the number of hours we're paying overtime for our attorney, the number of hours to do this, this, and this, and this....these are not costs that the taxpayers are going to see. This is going to be able to have a price tag on it. And I suppose that's part of my reasoning behind that because I want the taxpayers to understand what its costing the City. And this isn't even counting the number of sleepless nights, for different people all over the City, especially in this room. You can't put a cost on that. The time away from our families, but this is just an effort for people to understand this is costing us a lot.

Councilor Sinclair: Mr. Chairman, I understand Councilor Merrill's reservations about putting a hard limit... I don't think that was the nature in which Councilor Eosco put the motion forward. If the motion was that we set an advisory limit, as we approach which, we would get information and need to appropriate more money for the investigation to continue then I would support the motion. I would ask

the Councilor if she's comfortable changing the figure from \$5,000 to \$7,500. Again with the understanding, whatever limit we set that doesn't mean it will cost the City that much, it means that's how much might be spent before we have to take action again to authorize further expenditures. But the idea being not to overly constrain right out of the gate knowing that the judge will reasonably do what he can do to limit cost.

Councilor Eosco: As long as that number is out in the public, I am fine with changing that motion to \$7,500. Do I need to have another second to that?

City Clerk White: Will you still support it?

Councilor Winglass: I think the language that she and David and Councilor Merrill have added need to be added to the motion.

City Clerk White: I think they need to get together and make the motion clear and then read it back to me. She put in some, she's got some in there, he's got some in there and I don't know where we are now. I know we've got \$7,500, an advisory cap.

Councilor Eosco: So I am going to clarify that motion. I make a motion that we hire Robert Crowley at the rates he has specified with an initial appropriation cap of \$7,500. At that time the Council will be made aware of when we hit it.

Councilor Mitchell: Is this still going to include our adjustment clause in there? In the event we get toward \$7,500.

Councilor Lockwood: Councilor Mitchell can you please speak up.

Councilor Mitchell: I'm sorry, I just said do you still want to include the ability to adjust that at \$7,500?

City Clerk White: That's what she just said. At the cap of \$7,500; at that time the Council will be made aware of ....and then I didn't get the rest.

Councilor Brackett: Will you read it Mary.

City Clerk White: She made a motion that we hire Robert Crowley at his initial rate with the appropriation cap of \$7,500 and at the time Council be made aware of when we are coming near that limit.

Councilor Brackett: So is that the motion?

City Clerk White: Yea, that's the motion.

Councilor Brackett: Then I'll keep my second.

Councilor Eosco: The initial should be specified ...

City Clerk White: So you want to specify the initial?

Councilor Sinclair: At the specified rate, not the initial.

Chairman Wyman: Any preliminary Council comment? Any public comment?

Michael Wischkaemper: I think the motion is very sensible. I suggest again, you pay for time. The preparation done by the City before the investigator starts can reduce the amount of time that he needs. Some of the documents have already been collected. That's good. If they were scanned and ready for him

in that fashion it would be better. All of the documents haven't been collected. For example, correspondence that includes members of the City Council that might discuss it. Apparently weren't asked for it, they weren't in the documents that I saw. So I don't know exactly what documents were requested, but I would suggest that as part of the motion that Council ask staff to collect the documents, all the documents, that might relate in any way to these things. Preferably to scan them in order to have them available for the investigator. I think you'll find that that will reduce the price you'll have to pay.

Councilor Lockwood: I believe that would be common sense of the staff to do that in this situation and I don't believe it requires a motion from the Council. We've already said that we would open up any correspondence, any documents, anything... so I don't know why that would require a motion that's already covered under our intent of this investigation. I would hope that staff would do that as soon as we start this process.

Chairman Wyman: Any final Council comment? All those in favor.

City Clerk White: Unanimous

#### **K. New Business 8:42PM**

There was no new business.

Councilor Winglass made a motion at 8:43 PM to go into Executive Session to discuss a Real Estate Matter per Title 1 M.R.S.A Section 405(6)(C), a Legal Matter per Title 1 M.R.S.A. Section 405(6)(E) and Protection by Statute per Title 1 M.R.S.A. Section 405(6)(F). Councilor Brackett seconded the motion.

All were in favor of the motion.

Councilor Sinclair made a motion at 8:59 PM to come out of Executive Session. Councilor Paulhus seconded the motion. All were in favor of the motion.

Councilor Sinclair made a motion to waive the rules to go past 9:00 PM. Councilor Lockwood seconded the motion. All were in favor of the motion.

Councilor Sinclair made a motion at 9:00 PM to go back into Executive Session. Councilor Lockwood seconded the motion. All were in favor of the motion.

Councilor Mitchell made a motion at 9:19 PM to come out of Executive Session. Councilor Brackett seconded the motion. All were in favor of the motion.

The meeting adjourned at 9:19 PM with a motion by Councilor Mitchell, seconded by Councilor Winglass. All were in favor of the adjournment.

Attest:

Elizabeth Haskell, Asst. City Clerk

*Please note: These minutes are partial verbatim. A DVD recording of the meeting is available for review in the City Clerk's office during regular business hours by appointment. You can also view them on [Townhallstreams.com](http://Townhallstreams.com) for up to a year.*