

REGULAR MEETING MINUTES
CITY COUNCIL OF THE CITY OF BATH, MAINE
Wednesday, November 6, 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 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.

Presentation of a City Chair and Proclamation to Sergeant Jeffrey Shiers of the Bath Police Department for his 26 years of service to the citizenry of Bath.

PROCLAMATION

WHEREAS the City of Bath wishes to recognize the 26 years of service by Sgt. Jeffrey Scott Shiers of the Bath Police Dept., and

WHEREAS Jeff was born in Portland, Maine, the son of Richard R. and Maddie Lou Shiers, and graduated from Gorham High School in 1979, and

WHEREAS Jeff was in the United States Coast Guard from 1983 to 1987 as a Boatswains Mate and graduated from Maine Criminal Justice Academy in 1988, and

WHEREAS Jeff was appointed to the Bath Police Department as Patrol Officer October 19, 1987, promoted to Corporal March 22, 1996, and promoted to Sergeant March 12, 1999, and

WHEREAS Jeff was appointed Harbor Master for the City of Bath on June 1, 1998 through June 2005 and appointed again September 15, 2011 to August 9, 2013, and

WHEREAS Jeff served as Firearms Instructor, Honor Guard, Court Officer, and was in the Motorcycle Program for the Bath Police Department

WHEREAS Jeff has seen numerous commendations and recognition including:

- Apprehension of a dangerous suspect from a car, to a boat and into the water to retrieve and arrest the suspect
- Keeping safe numerous suicide victims over the years and for which he received the Metal of Honor in 1993 for bravery and judgment in a domestic violence case and an Act of Bravery commendation in 1997 for pulling a person from a burning building
- Received the Real Heroes Award from the American Red Cross in 2003
- Excellent work in the arrest of a subject in First Federal Savings Bank robbery in 2005 and for “one extra step” in the Gardiner Savings Bank robbery
- Excellent work in motor vehicle break-in investigations and cemetery vandalism
- Letter of Appreciation from Sheriff Mark Westrum for help in a fatal accident and armed encounter in Woolwich
- Received the Chief’s Merit Award for continuous outstanding service to the Bath Police Department and the City of Bath earning him the nickname, the “Prince of Bath”
- Letters of Appreciation for excellent work during the Viaduct Closure/Ice Storm; for representing the Bath Police Department as an Honor Guard/Pall Bearer at John “Jack” Hart’s funeral service; for excellent work with the USS Meyer (DDG-108) supertrials

WHEREAS Jeff Shiers’ long and productive career of public service to the citizens of Bath was marked by his integrity and professionalism and received the Officer of the Year in 2011, and

NOW THEREFORE BE IT PROCLAIMED by the City Council of the City of Bath, that the City recognizes the 26 years of excellent public service by Sergeant Jeffrey Shiers to the Bath citizenry.

This 6th day of November 2013.

Chairman Wyman amended the agenda by moving Public Hearing (#3) BIW TIF to after Item (F7) Discussion Bath Iron Works TIF.

C. Public Hearings 6:06PM

1) Ordinance: LUC Contract Zoning Amendment – Bath Iron Works (second passage)

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

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 the 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 put this Ordinance on the floor for discussion. Councilor Mitchell seconded the motion.

City Planner Andrew Deci gave a brief update on the content of the Ordinance and the timeline of the process.

Chairman Wyman opened the Public Session of the Public Hearing.

Gary Anderson of 26 Weeks Street asked Council to reconsider passage of the zoning amendment as he felt that a new offset offer should be renegotiated.

Seeing no other member of the public wishing to speak, Chairman Wyman closed the Public Session of the Public Hearing.

Councilor Sinclair made a motion to change \$65,000 in Section (B)(6)(b) to \$125,000. There was no second.

Councilor Merrill made a motion to change the amount of \$65,000 in Section (B)(6)(b) to \$100,000. Councilor Sinclair seconded the motion.

VOTE on Amendment:

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

NAYS: None

Amendment passed unanimously. 8-0

ROLL CALL VOTE on Amended Ordinance:

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

NAYS: None

Ordinance passed unanimously. 8-0

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

2) Ordinance: LUC Contract Zoning Amendment – Plant Home (second passage)

Councilor Eosco made a motion to waive the reading of the Ordinance. Councilor Winglass seconded the motion. The waiving motion passed unanimously.

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 to 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 Lockwood made a motion to put this Ordinance on the floor for discussion. Councilor Mitchell seconded the motion.

City Planner Deci gave the history and an overview of the content of the Ordinance.

ROLL CALL VOTE on Ordinance:

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

NAYS: None

ABSTENTION: Sinclair

Ordinance passed. 7-0-1

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

Don Capoldo of the Plant Home invited Council to a meeting at 10AM on November 18th with Representative Chellee Pingree regarding the expansion at the Plant Home.

D. Consent Agenda 6:33 PM

*4) Minutes of the previous meetings of October 2, 2013 (motion to accept as presented)

Councilor Mitchell made a motion to accept the minutes as presented. Councilor Paulhus seconded the motion. All were in favor of the minutes.

E. Time Devoted to Residents to Address the City Council 6:34 PM

No one spoke at this time.

F. Ordinances, Resolutions and Orders 6:34 PM

5) Approving tabulation of Election Returns of the State of Maine Referendum Election, City of Bath Municipal Election and RSU #1 Election on Tuesday, November 5, 2013 (motion to approve)

STATE OF MAINE BOND QUESTION ELECTION – November 5, 2013

BOND ORDINANCE - QUESTION 1: Maine Army National Guard	
YES	924
NO	605
BLANKS	26
BOND ORDINANCE - QUESTION 2: University of Maine System Bond	
YES	1049
NO	487
BLANKS	19
BOND ORDINANCE - QUESTION 3: Transportation Bond	
YES	1210
NO	328
BLANKS	17
BOND ORDINANCE - QUESTION 4: Maine Maritime Academy Bond	
YES	928
NO	602
BLANKS	25
BOND ORDINANCE - QUESTION 5: Maine Community College System Bond	
YES	1074
NO	469
BLANKS	12

CITY OF BATH ELECTION TOTALS – November 5, 2013

COUNCILOR WARD FIVE	TOTAL
MARI HOUTARI EOSCO	220
WRITE INS	4
BLANKS	44
COUNCILOR WARD SEVEN	
LEVERETT MITCHELL	249
WRITE INS	24
BLANKS	81
COUNCILOR AT LARGE	
STEVE BRACKETT	1224
WRITE INS	82
BLANKS	248

CITY OF BATH ELECTION TOTALS – November 5, 2013 cont'd

<u>BOND ORDINANCE – QUESTION ONE</u>	
“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?”	
For the Ordinance:	1208
Against the Ordinance:	328
BLANKS	18

RSU #1 CANDIDATE/BOND ELECTION TOTALS – November 5, 2013

Board of Directors, District 6	Total
WALTON, ALAN - BATH	276
WRITE INS	9
BLANKS	29
Board of Directors, District 1	Total
WRITE INS	36
BLANKS	163
<u>BOND ORDINANCE - QUESTION ONE</u>	
“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?”	
YES	1198
NO	344
BLANKS	6

Total State Votes Cast = 1,555 Total Registered Voters = 6,909
 Percentage of Voter Turnout = 22%

Councilor Mitchell made a motion to accept the election results as presented.

VOTE:

YEAS: 8

NAYS: 0

Passed unanimously. 8-0

6) Ordinance--LUC Amendment: Special Purpose Commercial Contract Overlay Zone, 36 High Street (first passage)

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

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:

ARTICLE 16: CONTRACT ZONING DISTRICTS

SECTION 16.20 - WINNEGANCE STORE CONTRACT ZONE

A. District Designation

The property designated for contract rezoning amendment is the property located at 36 High Street; being identified as lot 20 on tax map 45 as shown on the tax maps dated April 1, 2013, additionally modified by the transfer of adjacent property recorded in September of 2013. The property is known as the Winnegance Store.

B. Findings

1. This property is located in the Special Purpose Commercial Contract Overlay District. The City Council makes the following additional specific findings:
 - a. The building was built as a neighborhood store in 1902.
 - b. The building is in a neighborhood of residential uses and in the R2 zoning district.
 - c. The property is currently vacant; it last operated as a store in 2009 as a non-conforming use.
 - d. The size and historic nature of the building make redevelopment in accordance with the uses allowed in the R2 zone problematic.
 - e. In order for the store to return to its historic use, the breadth of uses and reductions in space and bulk standards of the C1 zoning district should be applied to the property.
 - f. All of the C1 uses allowed by the Special Commercial Contract Overlay District, however, would not be appropriate and compatible in the building or in the neighborhood.
 - g. The owner of the property has voluntarily offered to limit the number and type of permitted uses of the property as allowed by Land Use Code Section 8.20, D, 2, a.

C. Zoning Provisions Affected

This contract zoning amendment is intended to limit the number and type of authorized uses of the property as would otherwise be permitted according to C1 designation in a Special Purpose Commercial Contract Overlay District, but which would be inappropriate on this site given the character of the neighborhood in which the building is located.

D. Conditions of Approval

This contract zone is approved subject to the following condition:

1. The only uses allowed are the use categories:
 - a. Use 2.1.1.1.1 – Sales or rental of goods, merchandise or equipment with less than 5,000 square feet of floor area.
 - b. Use 2.1.1.2 - Convenience store
 - c. Use 2.1.3.1 – Low volume traffic generation with less than 5,000 square feet of gross floor area
 - d. Use 3.1.1 - Operations designed to attract and serve numerous customers or clients on the premises, however, limited to only attorneys’ offices, professional offices, and travel agent offices.
 - e. Use 4.1 – Manufacturing, processing, creating, repairing, renovating or assembling of goods, merchandise, or equipment.
 - f. Use 10.1 – Restaurant with carry out, delivery service and consumption outside fully enclosed structure allowed. Service to customers remaining in vehicles not allowed.
 - g. Use 10.2 – Restaurant, carry out, delivery, and consumption outside fully enclosed structure.
 - h. Uses 11.1.1 & 11.4 – Overnight accommodations, including bed and breakfast.
 - i. Use 21.3 – Farmer’s market.
 - j. Use 15.0 – temporary uses.

City Planner Andrew Deci explained the reason this was being brought before Council. He stated that this project is in compliance with the Comprehensive Plan's designation for neighborhood commercial nodes throughout the community.

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

Jennifer Green, owner of the Winnegance Store, gave an overview of her plans for the restoration of the building.

Jerry Provencher spoke in favor of the project.

Judy Barrington, a trustee of Maine Preservation and of Sagadahoc Preservation, stated that in the 1970's she used the store and is very pleased that it is coming back.

ROLL CALL VOTE on Ordinance:

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

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Wyman set second passage of this Ordinance for December 4, 2013 at 7:31PM.

7) Discussion Bath Iron Works TIF

Shanna Cook Mueller, Esq., City's TIF Attorney, gave a slide presentation explaining the concepts and basics of Tax Increment Financing.

John Fitzgerald, Vice President and General Counsel for BIW, explained the need for the granting of the TIF to BIW.

C. 3) Public Hearing BIW TIF

The following people spoke against granting of the BIW TIF:

Jerry Provencher of 15 Winslow Court, Arthur Jensky of 44 Pearl Street, Howard Waxman of 945 High Street, Gary Anderson of 26 Weeks Street, Susan Lubner of 51 Bedford Street, Lorry Fleming of 144 North Street, Professor Orlando Delogu of the University of Maine School of Law and Bruce Gagnon of 212 Centre Street.

The following people spoke in favor of granting the BIW TIF:

Amy Lent, Director of the Maine Maritime Museum, of 28 York Street, Eric London of 250 Centre Street, Matthew Bahl of 1161 Washington Street, James Strickland of 4 Park Street, Thomas Greenier of 428 Middle Street, Nick Nichols of 955 Washington Street, Ronald Berry of 15 Webber Avenue, Bradford Walfield of 75 Winship Street, Joanna Bragdon of 21 Oliver Circle, Dale Clay of 3 Mast Landing, Jane Morse, Manager of Sagadahoc Real Estate, Dan Dowling, President of Local S6 of BIW and Arnold Clay 3 Mast Landing

Councilor Paulhus made a motion for the meeting to go past 9PM. Councilor Lockwood seconded the motion. All were in favor of the motion.

G. Petitions & Communications 8:55 PM

Councilor Sinclair asked how the Council felt about his acting as moderator of the public BIW TIF forum to be held on November 13, 2013. After a brief discussion, the Council agreed that it would be best if no Councilors took an active role in the forum.

H. City Manager's Report 9:00 PM

There was no City Manager's report.

I. Committee Reports 9:01 PM

Councilor Paulhus presented two of the newly adopted City Flags to be displayed at City Hall to the City Manager.

Councilor Eosco gave a report on the recent Parking and Transportation Committee Meeting. She stated that they are working very hard to find parking space throughout the downtown and wanted to remind people that the Permitted Lots in the downtown are available for public parking after 6PM evenings and on weekends.

J. Unfinished Business 9:01 PM

There was no unfinished business taken up at this time.

K. New Business 9:02 PM

8) Appointment of one member to the Bath Water District Board of Directors with a term ending 12/2018.

Councilor Eosco nominated Clarence Stilphen to the position. All were in favor of the nomination.

9) Appointment of one member to the Bath Parks and Recreation Commission with a term ending 11/2016.

Councilor Eosco nominated William Gilson to the position. All were in favor of the nomination.

Councilor Eosco asked that Title 405(6)(A) be removed from the Execution Session. All were in agreement with the request.

Councilor Winglass made a motion at 9:04 PM to go into Executive Session to discuss Title 1 M.R.S.A Section 405(6)(C) Discussion or consideration of real or personal property permanently attached to real property or interests therein or economic development, Title 1 M.R.S.A. §405(6)(D) Discussion Labor Negotiations, Title 1 M.R.S.A. Section 405(6)(E) Consultations between the Council and its attorney concerning the legal rights and duties of the body or agency and Title 1 M.R.S.A. Section 405(6)(F) Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute. Councilor Paulhus seconded the motion. All were in favor of the motion.

Councilor Lockwood made a motion at 10:35 PM to come out of Executive Session. Councilor Mitchell seconded the motion. All were in favor of the motion.

The meeting adjourned at 10:35 PM with a motion by Councilor Paulhus, seconded by Councilor Mitchell. All were in favor of the adjournment.

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 by appointment. You can also view them on Townhallstreams.com for up to a year.