

**REGULAR MEETING MINUTES
CITY COUNCIL OF THE CITY OF BATH, MAINE
Wednesday, September 7, 2011 6:00 PM
City Council Chambers, Bath City Hall**

Present: Councilors Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, 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.

C. Public Hearings 6:01 PM

1) Ordinance: Chapter 17. Vehicles and Traffic, Article 5. Operations, Section 17-219. Commercial vehicles in excess of two axles - Granite Street. (second passage)

Chairman Wyman read the following Ordinance:

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE CODE OF THE CITY OF BATH, ADOPTED FEBRUARY 2, 1977, AND SUBSEQUENTLY AMENDED, BE FURTHER AMENDED AS FOLLOWS:

CHAPTER 17. VEHICLES AND TRAFFIC
Article 5. Operations

Section 17-219. Commercial vehicles in excess of two axles.

Add Granite Street, to read as follows:

All commercial vehicles having in excess of two (2) axles shall be prohibited from using Front Street from Vine Street to Cedar Street, Windjammer Way, Floral Street, Cottage Street, Elsinore Avenue, or Quimby Street, or Granite Street except by permission of the police chief, with the exception of service vehicles servicing said streets.

Councilor Rogers made a motion to put this Ordinance on the floor for discussion. Councilor Pagurko seconded the motion.

Chairman Wyman opened the floor to public comment. Seeing none, he closed the Public Hearing.

Councilor Eosco asked that Chief Field call and remind Maine Street of the street closers when it comes time for the carnival next year. Chief Field stated he would do that.

ROLL CALL VOTE:

YEAS: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass

NAYS: None

Ordinance passed unanimously. 8-0

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

D. Consent Agenda 6:02 PM

*2) Minutes of the previous meetings of August 3 and 16, 2011. (Motion to Accept as Presented)

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

E. Time Devoted to Residents to Address the City Council 6:03 PM

No one spoke.

F. Ordinances, Resolutions and Orders 6:03 PM

3) Order: Appointing City Arborist/Tree Warden

Chairman Wyman read the following Order:

**ORDER
APPOINTING CITY ARBORIST/TREE WARDEN**

WHEREAS, the City, through the Forestry Division and Community Forestry Committee, has shown concern with the community forest as a valuable part of the Cities infrastructure and,

WHEREAS, State law Title 30A §3282 provides municipalities the power to appoint a City Arborist/Tree Warden annually and,

WHEREAS, said law gives the Arborist/Warden control of the care of the municipal trees and the power to enforce all laws relating to the preservation of those trees and,

WHEREAS, Bath City Council adopted a forestry ordinance May 7, 1993 and,

WHEREAS, Thomas Hoerth has worked in the capacity of the City Arborist and has shown his abilities in the care and concern for the City's trees and,

WHEREAS, Thomas Hoerth is qualified by virtue of his experience, licensure and position as City Arborist/Tree Warden,

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that Thomas Hoerth is hereby appointed as the City Arborist/Tree Warden for one year from this date.

Councilor Pagurko made a motion to put this Order on the floor for discussion. Councilor Omo seconded the motion.

VOTE:

YEAS: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass

NAYS: None

Order passed unanimously. 8-0

4) Order: Fund the Management Services for Employees Retirement System

Chairman Wyman read the following Order:

**ORDER
TO FUND MANAGEMENT SERVICES**

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE MANAGEMENT AND INVESTMENT FIRM, TO BE DETERMINED AND NOMINATED BY THE CITY COUNCIL IN CONJUNCTION WITH ITS CONSIDERATION OF THIS ORDER, SHALL BE ENGAGED TO MANAGE AND INVEST CITY FUNDS EXPECTED TO BE RECEIVED FROM THE MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM.

Councilor Pagurko made a motion to put this Order on the floor for discussion. Councilor Omo seconded the motion.

City Manager Giroux explained the process for selecting the firm.

Councilor Winglass reported that he, Councilors Brackett and Sinclair were on the committee with City staff that decided that HM Payson, an investment firm from Portland, was the chosen firm to go forth with this matter.

Joseph Cuetara explained the second part of the process is to develop an investment policy and bring that policy forward to the Council.

VOTE:

YEAS: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass

NAYS: None

Order passed unanimously. 8-0

5) Order: Fund Preliminary Studies regarding improvements, repairs and renovations to the Bath Armory property

Chairman Wyman read the following Order:

**ORDER
APPROPRIATING FUNDS**

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE SUM OF FIVE THOUSAND DOLLARS (\$5,000.00) BE AND HEREBY IS APPROPRIATED FROM THE COUNCIL CONTINGENCY ACCOUNT FOR THE PURPOSE OF FUNDING PRELIMINARY STUDIES REGARDING IMPROVEMENTS, REPAIRS AND RENOVATIONS NEEDED AT THE SO-CALLED BATH ARMORY PROPERTY.

Councilor Rogers made a motion to put this Order on the floor for discussion. Councilor Pagurko seconded the motion.

Steve Balboni explained there would be 3-4 different contractors that would be doing the assessment. He stated that the assessment should take about 4 weeks to get done. This assessment would be just to get the building up to code.

VOTE:

YEAS: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass

NAYS: None

Order passed unanimously. 8-0

6) Order: Authorizing the demolition of all or part of the former Bath YMCA property.

Chairman Wyman read the following Order:

ORDER

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE CITY MANAGER IS HEREBY AUTHORIZED TO PROCEED WITH THE DEMOLITION OF ALL OR A PART OF THE FORMER BATH YMCA PROPERTY, THE SCOPE OF THE DEMOLITION TO BE DETERMINED BY COUNCIL.

Councilor Pagurko made a motion to put this Order on the floor for discussion. Councilor Omo seconded the motion.

Recreation Director Steve Balboni reported that the Bath Youth Meeting House Board had met and gave full support to the demolition of the facility on Summer Street, if Council will support the Skatepark & Youth Meeting House to move into the Armory. He stated the Board realizes it is tough times and want to save the City money and also don't want to hurt the downtown businesses but they feel they have an opportunity to move forward and are willing to take the risk. Mr. Balboni stated that the City would not only get rid of a liability but it would put a tenant in a vacant building the City now owns.

City Manager Giroux stated that if Council decides to demolish the Old Bath YMCA building they might consider to agree to allow the Skatepark and Meeting House to move their equipment to the Armory. He also suggested that the Council and Skatepark Board meet in the Fall in workshop to start talking about the future of fundraising but not actually commit to moving the Park to the Armory.

Councilor Rogers stated he didn't think it was a good idea to store the Skatepark equipment in a place that could be torn up by construction due to renovations. He offered the suggestion to store the equipment at 2 Town Landing.

Rabyrne Hutton of 195 High Street stated it sounded like an ultimatum from the Skatepark Meeting House Board that they would support it only if they got the Armory. Mr. Hutton stated that he supports taking the building down completely.

Jacqueline Dwinal of 1552 Washington Street said that she supports the full demolition of the old YMCA. Ms. Dwinal stated she didn't remember that during the walk-through of the Armory Building the subject of the City giving the building to the Skatepark/Meetinghouse coming up. She stated she didn't think that should be a Council decision but should be put out to the citizens of Bath.

Chair of the Skatepark/Youth Meeting House Board, Claire Berkowitz of 18 Seekins Drive, stated she recalled that the Board did the walk-through before it was purchased and brought it to the attention of the City that the building could be purchased and worked with Senator Goodall to purchase it. Ms. Berkowitz stated she felt there was good faith in the purchasing of the Armory that it was to be used as the Skatepark/Youth Meeting House facility. She stated that the City needs a youth-focused Community Center that is inclusive of all people.

Don Capoldo asked the Council to think about the message the children that use the Skatepark are getting when Council doesn't appear to support them in their activities.

Heidi Tucker of Edward Street asked if any requests or plans have come to Council regarding people wanting to go into the Armory. She stated that it bothers her that there appears to be discrimination regarding the skatepark kids and the other kids. Ms. Tucker asked if Council could make a motion to put the Skatepark in the Armory Building.

Director of Main Street Bath, Jennifer Geiger asked Council what would happen to the site that the old YMCA is on once it has been demolished. She commented the Skatepark has been a very unique facility and there is nothing similar in the immediate area so therefore it has brought people into the City, which has meant economic benefits to City.

Councilor Sinclair made a motion to amend the Order to read as follows:

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE CITY MANAGER IS HEREBY AUTHORIZED TO PROCEED WITH THE DEMOLITION OF ALL OF THE FORMER BATH YMCA PROPERTY. THE REC DEPARTMENT IS AUTHORIZED TO MOVE EXISTING ASSETS OF THE BATH YOUTH MEETING HOUSE TO THE BATH ARMORY PROPERTY FOR STORAGE UNTIL THE FUTURE USE OF THE ARMORY BUILDING HAS BEEN DETERMINED.

Councilor Brackett seconded motion.

Recreation Director Steve Balboni stated that during this interim time from demolition to moving into a different facility they would be trying to keep the youth engaged in different programs and bring the youth on board to help with ideas for the design and programs for the new facility. He asked who would be involved in the decision for the future use of the Armory Building and asked if the Board could move forward with applying for grants and proceed with fundraising.

City Manager Giroux suggested that the Council and the Board meet in workshop in the near future to discuss these topics.

VOTE on Amendment:

YEAS: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass

NAYS: None

Order passed unanimously. 8-0

VOTE on Amended Order:

YEAS: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass

NAYS: None

Order passed unanimously. 8-0

7) Ordinance: LUC Amendment to the Zoning map changing the zoning on lots 13 and 14 Tax Map 38 from M Zone to R2 Zone. (first passage)

City Manager Giroux reminded everyone that this would be the last Council Meeting that Jim Upham would be attending as City Planner. He explained that Mr. Upham's last day with the City would be September 30th.

Mr. Upham received a thank you and a standing ovation for all the hard work and projects that he had completed to make the City of Bath a better place to live.

Chairman Wyman read the following Ordinance:

ORDINANCE

WHEREAS, THE CITY COUNCIL OF THE CITY OF BATH, AS PART OF THE ADOPTION OF THE BATH LAND USE CODE ON JULY 19, 2000, EFFECTIVE AUGUST 9, 2000, DEPICTED THE BOUNDARIES OF ALL LAND USE DISTRICTS ON A ZONING MAP OF THE CITY OF BATH, ALSO DATED JULY 19, 2000, INCORPORATED BY REFERENCE INTO THE LAND USE CODE PURSUANT TO THE PROVISIONS OF SECTION 7.02 OF THE SAID CODE, AND

WHEREAS, IT IS NECESSARY AND APPROPRIATE THAT THE BOUNDARIES OF THE LAND USE DISTRICTS BE, FROM TIME TO TIME, ADJUSTED AND AMENDED, IN ORDER TO CREATE NEW DISTRICTS AND ADJUST BOUNDARY LINES OF EXISTING DISTRICTS,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE ZONING MAP OF THE CITY OF BATH, DATED JULY 19, 2000, BE AND HEREBY IS AMENDED IN ACCORDANCE WITH THE SKETCH PLAN ATTACHED HERETO AND MADE A PART HEREOF. THIS CHANGE SHALL BE INCORPORATED INTO AND BE PART OF THE OFFICIAL ZONING MAP OF THE CITY OF BATH. THE SPECIFIC ADJUSTMENT IS:

An amendment to the Zoning Map changing the zoning on lots 13 and 14 on tax map 38 from M Zone to R2 Zone.

Councilor Pagurko made a motion to put this Ordinance on the floor for discussion. Councilor Omo seconded the motion.

City Planner Jim Upham stated that these parcels are in a residential area and having these homes in a museum zone puts a burden on the property owners as home occupations are not allowed and putting on additions are not allowed in the zone. Mr. Upham stated the Planning Board held a public hearing and the Board and property owners both recommend this change.

Karen Johnson of 237 Washington Street thanked Council for consideration of this change as she would like to have a jewelry business out of her home.

ROLL CALL VOTE:

YEAS: Brackett, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass

NAYS: None

Ordinance passed unanimously. 8-0

Chairman Wyman set second passage for this Ordinance for October 5, 2011 at 6:01 PM.

8) Ordinance: LUC Amendment Article 8, Section 8.22 D. Contract Rezoning (first passage)

Chairman Wyman read the following Ordinance:

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:

Amend Article 8, Section 8.22, by adding the following:

D. Contract Rezoning

Contract rezoning is allowed in the PH District (see Section 8.20).

And amend Article 8, Section 8.20, B, by adding the following:

8. Plant Home Zone.

(Note: Additions are underlined.)

Councilor Pagurko made a motion to put this Ordinance on the floor for discussion. Councilor Omo seconded the motion.

City Planner Jim Upham stated that this change puts the Plant Home Zone in the same category as the downtown, BIW and the Route One Zone and this change would require an application by the applicant. It would take the Planning Board recommending it to the City Council and would require approval of the Commissioner of the DEP. Should these all be approved, then the applicant could ask to have a contract zone created and that would take a hearing by the Planning Board and two meetings of the City Council and approval by the Commissioner of the DEP. Mr. Upham stated this change just allows Contract Zoning in that zone and does not create a Contract Zone.

Henry Hall of 18 Riverview Road spoke against the contract rezoning that would allow the southern expansion but favored reducing the 20-foot setback that would allow an eastern expansion.

President of the Plant Home Board Daniel Daggett stated that Thomas Plant didn't give the Plant Home to the City of Bath and that the Board had done due diligence to bring forth a good plan.

Phyllis Bailey of 16 Riverview Road stated she was not opposed to the Plant Home expansion but was opposed to contract rezoning to support a seriously flawed building. She offered some suggestions regarding the plan of the building

Fred Denson of East Lane read a note from Matt Carroll of East Lane, who was not able to attend the meeting. Mr. Hanna thought contract rezoning would benefit the neighborhood but was concerned it may be used to circumvent the other zoning requirements. He felt that creating a contract zone would be the best to keep the proposed buildings east of the Plant Home, preserve the river views and access of the river. Mr. Carroll felt it would be more effective to increase the number of units at the existing building and expressed traffic safety concerns. Mr. Denson said the contract proposal as he understands it is a good option for the neighbors to be able to handle what's going on there and at least have some input. He expressed his concern over the real intent of the Plant Home and their need for separate nonattached units.

Tom Saucier with Site Design Associates said they were there to discuss whether the use of the contract zone is an option in the Plant Home zone. He stated they were there for the Plant Home to be able to have a way to address the issue of having two lots being located on this site with a setback issue. He said that no one has offered an objection to the contract zone but only objections to the site plan.

Kevin Connors of Riverview Road voiced concerns that should the contract rezoning go through the neighborhood would be giving up so much in regards to the impact on the environment in the neighborhood that the Plant Home would not be able to give fair quid pro quo to the neighborhood.

Councilor Sinclair made a motion to table this item to the November 2, 2011 Council Meeting. Councilor Winglass seconded the motion.

ROLL CALL VOTE on tabling motion:

YEAS: Brackett, Paulhus, Rogers, Sinclair, Pagurko, Winglass

NAYS: Omo, Eosco

Tabling motion passed. 6-2

G. Petitions & Communications 8:28 PM

There were no petitions or communications.

H. City Manager Report 8:28 PM

City Manager Giroux asked if Council was interested in having a Candidate Table at the Citizen Involvement Day. The consensus of the Council was in favor of having this table.

I. Committee Reports 8:32PM

Councilor Eosco stated that a small committee has put together an application to nominate Bath as a Great American Main Street through the National Trust for Historic Preservation.

J. Unfinished Business 8:33 PM

Councilor Rogers made a motion to contribute \$7,000 out of Council Contingency to the Recreation Department to work in partnership with the President of the Cal Ripkin Little League to make needed repairs and upgrades to the baseball fields. Councilor Sinclair stated that he would second the motion if Councilor Rogers amended his motion to contribute \$5,000 instead of \$7,000. Councilor Rogers amended the motion to reflect the \$5,000 amount. Councilor Sinclair seconded the motion to contribute \$5,000 to the Recreation Department to upgrade the baseball fields.

Councilor Eosco made a motion to table this item to the October 5, 2011 meeting. Councilor Winglass seconded the motion to table.

VOTE on tabling motion:

YEAS: 5

NAYS: 3

Tabling motion passed

K. New Business 8:40 PM

Councilor Omo left his seat at this time.

9) Appoint one member to the Bath Board of Assessment Review with a term to expire July 2014

Councilor Pagurko, on behalf of the Interview Committee, nominated Daniel Shipley to the position on the Bath Board of Assessment Review. All were in favor of the nomination.

10) Appoint two members to the Bath Old Customs house Board of Directors with terms to expire August 2014.

Councilor Pagurko, on behalf of the Interview Committee, nominated Andrew Perry and David Desmond to the positions on the Board of Directors for the Bath Customs House. All were in favor of the nominations.

11) Appoint two members to the Bath Planning Board with terms to expire September 2014

Councilor Sinclair asked if the two members could be done separately.

Councilor Pagurko, on behalf of the Interview Committee, nominated James Hopkinson to the first position on the Bath Planning Board. Councilor Sinclair abstained from the vote citing that Mr. Hopkinson was his landlord. All were in favor of the nomination.

Councilor Omo took his seat at this time.

Councilor Pagurko, on behalf of the Interview Committee, nominated Clarence Stilphen to the second position on the Bath Planning Board. All were in favor of the nomination.

12) Appoint one member to the Bath Zoning Board of Appeals with term to expire September 2014.

Councilor Pagurko, on behalf of the Interview Committee, nominated Eleanore Holland to the position on the Bath Zoning Board of Appeals. All were in favor of the nomination.

Councilor Pagurko reported there were still two positions open on City committees - one position on the Bath Zoning Board of Appeals and one position on the Sidewalk Vending Committee for a Downtown Food Vendor.

Councilor Winglass made a motion at 8:43 PM to go into Executive Session to discuss Real Estate Matters per 1 MRSA §405(6)(E) and Personnel Matters per 1 MRSA §405(6)(A). Councilor Pagurko seconded the motion. All were in favor of the motion.

The Council agreed to go beyond 9:00 PM.

Councilor Pagurko made a motion at 9:25 PM to come out of Executive Session. Councilor Winglass seconded the motion. All were in favor of the motion.

The meeting adjourned at 9:25 PM with a motion by Councilor Brackett, seconded by Councilor Pagurko. 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.