

REGULAR MEETING MINUTES
City Council of the City of Bath, Maine
Wednesday, February 3, 2010 6:00pm
City Council Chambers, Bath City Hall

Present: Councilors Cochrane, Omo, Paulhus, Rogers, Eosco, Sinclair, Pagurko, Winglass,
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: 6:01 PM

Chairman Wyman changed the order of the agenda to take up the Public Hearings #2) Ordinance: LUC Amendments Creation Plant Home Zone (second passage) and #3) Ordinance: LUC Amendments Bath Iron Works Contract Rezoning (second passage) before #1) Ordinance: Fields of the Future Financing (second passage)

1) Ordinance: Fields of the Future Financing (second passage)

ORDINANCE AUTHORIZING PERMANENT FINANCING

THE PURPOSE OF THIS ORDINANCE IS TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS/NOTES OR OTHER INDEBTEDNESS FOR THE CITY OF BATH, MAINE, IN AN AMOUNT UP TO, BUT NOT TO EXCEED, \$300,000.00 FOR THE PURPOSE OF FUNDING THE PURCHASE AND INSTALLATION OF 90,000 SQUARE FEET OF ALL WEATHER TURF AT THE MCMANN FACILITY.

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH, AS FOLLOWS:

Section 1. That a sum up to, but not to exceed, \$300,000.00 is hereby appropriated for the purpose of providing funding for the purchase and installation of 90,000 square feet of all weather turf at the McMann Facility.

Section 2. That, for the purpose of financing the aforesaid appropriation, authorization is hereby given to incur indebtedness by the issuance of bonds/notes of the City of Bath, in an amount up to, but not to exceed, \$300,000.00 under, and pursuant to, the Charter of the City of Bath.

Section 3. That any and all bonds/notes issued pursuant to this Ordinance shall be payable in annual installments.

Section 4. That the term of any bonds/notes or other indebtedness issued under the within Ordinance shall not exceed ten (10) years.

Section 5. That the proceeds of any bonds/notes issued pursuant to this Ordinance shall be used only for those purposes specified in Section 1 above.

Section 6. That any proceeds of the bonds/notes issued not used for the purposes specified in Section 1 shall be applied to repayment of the principal and/or interest of any such bonds/notes.

Section 7. That any suit questioning the validity of this Ordinance shall be barred unless commenced within forty-five (45) days following publication of the Ordinance, said publication in accordance with Section 809 of the Charter of the City of Bath.

Section 8. That the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, shall determine the date or dates, maturities, denominations, interest rate or rates and any other details of each issue of bonds and/or notes issued in anticipation of this permanent financing.

Section 9. That any and all bonds and/or notes issued by the City pursuant to Chapter 8 of the Charter of the City of Bath shall be signed by the City Treasurer and countersigned by the Chairman of the City Council and the City Manager.

Section 10. That any and all bonds and/or notes issued pursuant to Chapter 8 of the Charter of the City of Bath shall be general obligation securities of the said City.

Section 11. The City Treasurer, with the approval of the Chairman of the City Council and the City Manager, is hereby authorized to make any such bonds or notes authorized hereby subject to call for redemption with or without premium at the election of the City before the dates fixed for the final payment thereof. Any notes issued hereunder shall be subject to prepayment without penalty.

Councilor Omo made a motion to waive the reading of this Ordinance. Councilor Pagurko seconded the motion. All were in favor of the motion

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

Parks and Recreation Director Steve Balboni explained to Council that McMann Field had been chosen for improvements this year as it has the most impact on all the ball facilities and athletes. Mr. Balboni stated this project would expand the usage of that facility by ten fold and is a City of Bath project, not a Fields of Our Future project. He urged Council to take advantage of the price that had been worked out as it would not be seen again. Mr. Balboni reported the revenues from the usage of this field would increase from 55% to 58%, maintenance savings and partnership with the Boosters would pay back the loan and there would not be a tax increase. He gave an overall update on environmental and health information, future replacement regarding the turf and the present drainage system of the field.

City Manager Giroux explained that the he doesn't see the need to increase the RSU assessment to fund the project.

Chairman Wyman opened the meeting to public comment:

Jackie Dwinal of 1552 Washington Street, spoke against this project citing the project as discretionary spending and that it should not be paid for by the taxpayers.

Matthew Belanger of 8 Mill Pond Drive spoke in support of the project stating "If you build it they will come."

Robert Moulton of 127 Dummer Street said that as long as the funding for the field maintenance and replacement in the future can come from the Recreation fees and if there will not be any increases in RSU#1 fees this year and in the years to come, he would be in favor.

Edmund Benedikt of 10 Garden Street stated that he had 3 concerns. Mr. Benedikt said the first was the abrasion injury aspect of the field expressing his hope that the Council would look into this more. His second concern was the environmental issues with the drainage system and thirdly with the dependence on RSU #1's support of this project.

Nancy Nellis of 985 High Street asked where the Skatepark rates are in the priority list of the Recreation Department projects in comparison to the field and whether children that play sports on this field will be required to buy new equipment.

Mr. Balboni stated that there was a need at the Skatepark but felt that the turf field is just as important and that no different gear is needed to play on this field.

Edwin Rogers of 5 Old Sloop Lane spoke in favor of the project due to speaking with others that use this turf and like it and referenced the economic help that it would generate.

Richard Hill of 71 South Street spoke against the project due to his belief that this is discretionary spending and also had concerns dealing with replacement costs.

David Comeau of 6 Matthews Avenue spoke in favor of the project and felt that this is the right time to do this as the price will be much more in coming years and also felt it is good for the City.

John Dugan Shipway of 997 Washington Street spoke in favor of the project, stating that it would lead to improvement to the other fields too. Mr. Shipway felt that this project would give the schools a stronger athletic program and support the youth.

Patrick Conley of 378 Middle Street spoke in support of the project and urged Council to invest in the City's future and youth.

Brian Hatch of 14 Allen Street spoke in favor of the project, pointing out that it would make the field much more accessible to the youth to use.

Jack Pennell of 77 Lincoln Street spoke against the project because he felt the budget for it is based on unpredictable future projections.

Susan Goodfellow of 5 Regatta Lane spoke in favor of the project due to the turf having a carbon positive product, which is safer for athletes. Ms. Goodfellow urged the Council to vote in favor of the field, and thought that it would be a phenomenal asset to the City of Bath.

Stephanie Jewett of 114 Ridge Road spoke against the project and felt that taxpayers shouldn't be asked to pay more. Ms. Jewett said that she would like to see the children be more involved with the raising of funds for this project.

Mike Fear of 944 Middle Street spoke in favor of the project, pointing out that this would bring more commerce into the City. Mr. Fear stated that he, as a business owner, would be willing to do a yearly pledge to help pay off the loan.

Chairman Wyman closed the Public Hearing.

ROLL CALL VOTE:

YEAS: Cochrane, Omo, Eosco, Winglass, Wyman

NAYS: Paulhus, Rogers, Sinclair, Pagurko

Ordinance passed. 5-4

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

2) Ordinance: LUC Amendments Creation Plant Home Zone (second passage)

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:

With Amendments to Articles 2, 7, 8, 9, and 11.

A complete copy of this Ordinance with these changes is on file with agenda materials for the February 3, 2010 meeting in the Bath City Clerk's Office at 55 Front Street, Bath, Maine.

Councilor Omo made a motion to waive the reading of this Ordinance. Councilor Pagurko seconded the motion. All were in favor of the motion.

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

City Planner James Upham explained this is a Land Use Code text and map amendment to create the Plant Home Zone and is consistent with the Comprehensive Plan. He stated that this amendment deals with a number of definitions, space and bulk standards, land use table and various uses, assisted residential facilities and changes the zoning map. Mr. Upham addressed temporary uses questions by saying that any of these uses would require site plan approval.

Fred Denson of 8 East Lane, an abutter, spoke in favor of this change but had some concerns with the alternate/temporary uses.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

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

3) Ordinance: LUC Amendments Bath Iron Works Contract Rezoning (second passage)

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

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, dated April 1, 2009.

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 had 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 a 46,077 square-foot addition on the south side of the building. The addition is proposed to be 106 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 Condition 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.

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.

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, 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 Hull building be closed from sunset to sunrise;
3. That the evergreens and the white picket fence along Washington Street, between the street and by 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 Omo made a motion to waive the reading. Councilor Pagurko seconded the motion. All were in favor of the motion.

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

City Planner James Upham explained that contract zoning allows the City Council to modify the space and bulk standards in certain zones such as the industrial zone where BIW is located. He stated that BIW is requesting this contract zoning change so they can build an addition to the ultra hull building with a height up to 106 feet and that the present contract zone height allowance is 75 feet. Mr. Upham informed Council that the DEP has to approve the Ordinance also before it can go into effect.

ROLL CALL VOTE:

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

NAYS: None

Ordinance passed unanimously. 8-0

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

D. Consent Agenda 8:22 PM

(Items as marked with an asterisk () on the agenda shall be considered routine matters not requiring debate. In the case of items marked with an asterisk, the motion as stated in parenthesis following the items on the agenda shall be considered to have been passed by the City Council as part of the Consent Agenda. Any Councilor wishing to have any item so marked with an asterisk removed from the Consent Agenda shall have the unlimited right to do so at any time prior to the vote by Council on the Consent Agenda. If such an item is removed from the Consent Agenda, it shall be dealt with in the normal course of the meeting.)*

*4) Motion by Councilor Pagurko to accept as presented the Minutes of the previous meeting of January 6, 2010 Council Meeting. Councilor Omo seconded the motion. All were in favor of the motion.

E. Time Devoted to Residents to Address The City Council 8:23 PM

No one spoke at this time.

F. Ordinances, Resolutions and Orders 8:23 PM

5) Ordinance: LUC Text Amendment – Section 7.10 Division of a Functionally Divided Lot (first passage)

Councilor Omo made a motion to waive the reading of this Ordinance. Councilor Pagurko seconded the motion. All were in favor of the 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:

Amend Article 7, by adding Section 7.10, as follows:

Section 7.10 Division of a Functionally Divided Lot.

Where there exists on a single lot, multiple principal structures established prior to December 7, 1983, which are functionally independent, then the lot may be divided such that the division results in each principal structure being located on its own individual lot, without that individual lot having to meet the space and bulk requirements for the Zoning District in which it is located, provided that the following criteria are met:

A. All uses of the principal structures are permitted uses under this Code.

B. Each individual principal structure has been utilized on a separate basis with different occupancies.

C. There are no common or shared utilities or easements serving the single lot and the division will not create any common or shared utilities or easements except for the access drive and/or parking.

D. The division line(s) between structures must be drawn such that the structures meet the required space and bulk requirements of the District to the greatest extent practicable.

E. All parking requirements for each principal structure and use must be met on each new lot created by the division or by a dedicated off-site easement for parking that will run with the land.

Note: Additions are underlined.

Motion by Councilor Pagurko, second by Councilor Omo to put this Ordinance on the floor for discussion.

City Planner James Upham explained since the Donald Small School and the Nunnery are already functionally divided this amendment would allow these lots to be sold separately.

ROLL CALL VOTE:

YEAS: Cochrane, Omo, Paulhus, Rogers, Sinclair, Pagurko, Winglass

NAYS: None

Ordinance passed unanimously. 7-0 (Councilor Eosco was absent during voting.)

Chairman Wyman set second passage of this Ordinance for March 3, 2010 at 6:01PM.

Councilor Eosco took her seat at this time.

6) Order: Amending Tax Increment Financing Budget

Chairman Wyman read the following Order:

ORDER AMENDING TAX INCREMENT FINANCING BUDGET

WHEREAS, the City of Bath, through its City Council, approved a Tax Increment Financing Budget for Fiscal Year 2010; and

WHEREAS, two additional categories of expenses have been identified by staff as eligible for TIF funding, being expenditures for the train station and transportation, and for sewer upgrades engineering; and

WHEREAS, opportunities for projects/expenditures in these categories have manifested themselves as a priority for the City.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the 2010 Tax Increment Financing Budget be amended to include an appropriation for the train station and transportation in the amount of \$35,000.00, and an appropriation for sewer upgrades engineering in the amount of \$120,000.00.

Motion by Councilor Pagurko, second by Councilor Cochrane to put this Order on the floor for discussion.

City Manager William Giroux explained that this would amend the TIF budget the Council had already approved. The engineering money for sewer design is focused on the Park Street sewer issue and the train station portion goes for lights, heat, janitorial services and general up keep. The Council asked that there be an independent peer review of the engineering design done when it is finished. Mr. Giroux agreed to have that done.

VOTE:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

7) Order: Exercising the Alewife fishing rights at Winnegance Lake to be administered by the Winnegance Alewife Commission as per Harvest Plan.

Councilor Pagurko made a motion to waive the reading of the Order. Councilor Omo seconded the motion. All were in favor of the motion.

ORDER

Be It Ordered by the City Council of the City of Bath, Maine, that the Alewife Fishing Rights at Winnegance Lake be operated by the Winnegance Alewife Commission as per Ordinance adopted August 28, 1985, and the municipal rights to take alewives will be sold by the Commission. The Harvest Plan (*Conditions and Regulations*) will be submitted by the Commission setting forth in detail the exact conditions under which alewives may be taken, all in accordance with good conservation practices. This plan will be submitted to the Department of Marine Resources by the Commission with City of Bath approval.

Motion by Councilor Omo, second by Councilor Pagurko to put this Order on the floor for discussion.

VOTE:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

8) Order: Exercising the Alewife fishing rights at Whiskeag Creek to “Rod and Line” only.

Chairman Wyman read the following Order:

ORDER

Be It Ordered by the City Council of the City of Bath, as follows:

that, the taking of alewives at Whiskeag Creek will be restricted to “Rod and Line” only.

Motion by Councilor Pagurko, second by Councilor Omo to put this Order on the floor for discussion.

VOTE:

YEAS: 8

NAYS: 0

Order passed unanimously. 8-0

G. Petitions & Communications 8:43 PM

Councilor Eosco asked that people contacting her by email should please leave their name and address.

H. City Manager’s Report 8:43 PM

There was no City Manager’s Report.

I. Committee Reports, if any 8:44 PM

Councilor Eosco reported that Main Street Bath is working on a Historic Preservation Award and will be holding a meeting to gather information on city history on February 22, 2010 at 7:00 PM at the Winter Street Church. She asked anyone with historical information to please attend and help with the application.

Councilor Sinclair made the Council aware that Sandra Morrell Rooney is resigning from the Mid Coast Center for Higher Learning and hoped that the Council would be proactive in finding her replacement.

Councilor Winglass reported on the meeting of the Finance Committee Meeting and stated the budget is right on at the halfway point. He said that the City Manager has asked the Departments to put in a separate budget containing their wish list. Councilor Winglass said the biggest concern will be the Landfill budget.

J. Unfinished Business 8:48 PM

There was no unfinished business brought up at this time.

K. New Business 8:48 PM

Councilor Pagurko nominated Storrs Bigelow and Catherine Wyman Powers to fill the positions on the Bath Housing Board of Directors with terms to expire in February 2014. Councilor Cochrane seconded the nominations. All were in favor of the nominations.

A motion was made by Councilor Pagurko at 8:51 PM to go into an Executive Session to discuss a Real Estate Matter per 1 MRSA §405(6)(E). Councilor Omo seconded the motion. All were in favor of the motion.

Councilor Rogers made a motion to come out of Executive Session at 9:06 PM. Councilor Pagurko seconded the motion. All were in favor of the motion.

The meeting adjourned at 9:06 PM with a motion by Councilor Pagurko, seconded by Councilor Omo. All were in favor of the motion.

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.