

**REGULAR MEETING MINUTES
City Council of the City of Bath, Maine
Wednesday, February 1, 2006 6:00pm
City Council Chambers, Bath City Hall**

Present: Councilors Hinds, Omo, Quimby, Blake, Hart, Verville, Pagurko, Winglass and Chairman Wyman.

Also in attendance was the Acting City Manager – Paul Mateosian, City Solicitor - Roger Therriault and City Clerk - Mary White.

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

Chairman Wyman and Police Chief Peter Lizanecz made presentations to Sargent Robert Savary, Bath Police Department and Eric Brown, a Bath citizen, for their support in the apprehension of an armed robber on November 17, 2005.

They also gave out the awards for the “Police Officer of the Year 2005” to Detective David Beauregard, “Employee of the Year 2005” to Gerald Small and “Volunteer of the Year 2005” to Councilor John “Jack” Hart.

C. Public Hearings: 6:17 PM

1) Public Hearing - Bond Refinancing Ordinance (second passage)

Motion by Councilor Blake, second by Councilor Hinds to waive the reading of this Ordinance. All in favor.

BOND REFINANCING ORDINANCE

AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS FOR THE CITY OF BATH, MAINE, IN AN AMOUNT NOT TO EXCEED \$5,750,000 FOR THE PURPOSE OF REFINANCING CERTAIN OUTSTANDING BONDS OF THE CITY IN ORDER TO ACHIEVE DEBT SERVICE SAVINGS.

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, \$5,750,000 be and hereby is appropriated for the purpose of refinancing all or any portion of certain outstanding bonds of the City approved at public referendum vote of the City pursuant to Sec. 617 of the City Charter, (collectively, the “Refunded Bonds”) as follows:

<u>Bond Purpose</u>	BIW Settlement	School Renovations
<u>Referendum Approval Date</u>	November, 1994	November, 1995
<u>Year of Issue</u>	1995	1996
<u>Original Amount</u>	\$6,300,000	\$6,900,000
<u>Amount Outstanding</u>	\$1,680,000	\$3,795,000
<u>Call Date (On or After)</u>	03/01/2005	10/01/2006
<u>Year(s) of Maturity</u>	2007-2010	2006-2016
<u>Original Term</u>	15 Years	20 Years
<u>Maturity Date</u>	03/01/2010	10/01/2016

and for the purpose of paying any redemption premium of and accrued interest, if any with respect to such Refunded Bonds, and also for the payment of any and all costs associated with the issuance of any bonds of the City authorized by this Ordinance for the purpose of refinancing the Refunded Bonds.

Section 2. That, for the purpose of refinancing the Refunded Bonds, authorization is hereby given to incur indebtedness by the issuance of general obligation bonds of the City in an amount up to, but not to exceed, \$5,750,000 under and pursuant to, City Charter, provided, however, that the present value of the principal and interest payments due on any refunding bonds issued pursuant to this Ordinance shall not exceed the present value of the principal and interest payments to be paid by the City on the Refunded Bonds. In the event that the City shall have refinanced all of the Refunded Bonds and in the process, shall have issued less than all of the bonds or notes authorized to be issued by this Ordinance, then any amount authorized to be borrowed hereunder and not so issued, shall be automatically rescinded and of no further force or effect.

Section 3. That any and all bonds issued pursuant to this Ordinance shall be payable in annual installments which shall be substantially equal in amount or which shall be so arranged so that no installment shall be less than the amount of any installment payable in any subsequent year.

Section 4. That the term of any bonds issued under this Ordinance shall not exceed the final maturity of the Refunded Bonds.

Section 5. That the proceeds of the bonds 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 issued but not used for the purposes specified in Section 1 above shall be applied to repayment of the principal and/or interest of any such bonds.

Section 7. 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 City Charter.

Section 8. The City Treasurer, with the approval of the City Manager and the Chairman of the City Council may borrow money temporarily by the issuance of notes in anticipation of the issuance of the bonds authorized pursuant to this Ordinance.

Section 9. 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 other details of each issue of bonds and/or notes issued in anticipation of the bonds authorized pursuant to this Ordinance.

Section 10. That the City Treasurer, with the approval of the Chairman of the City Council and the City Manager, may provide that any bonds and/or notes issued pursuant to the authority of this Ordinance may be issued subject to call for redemption with or without premium before their respective dates of maturity.

Section 11. That any or all bonds and/or notes issued by the City pursuant to Chapter 6 of the City Charter, or Section 8 of the City Charter, shall be signed by the City Treasurer and Countersigned by the Chairman of the City Council and by the City Manager.

Section 12. That any and all bonds and/or notes issued pursuant to Chapter 8 of the Charter of the City Charter, shall be general obligations of the City, and shall constitute a pledge of its full faith and credit.

Section 13. The City Treasurer is hereby authorized to provide for the sale of any bonds or notes authorized by this Ordinance, on either a competitive bid or a negotiated sale basis, as shall in such official's sole discretion, be in the best interests of the City. If any bond or notes are to be sold on a negotiated basis, the City Treasurer, with the approval of the City Manager, is hereby authorized to execute a purchase contract with an underwriter of the bonds or notes, upon such terms as such officials, by their respective signatures, shall approve.

Section 14. Each of the Chairman of the City Council, the City Manager and the City Treasurer, is hereby authorized to enter into any and all other agreements as may be necessary or convenient to the carrying out of the provisions of this vote, including but not limited to a refunding escrow agreement.

Motion by Councilor Pagurko, second by Councilor Blake to put this item on the floor for discussion.

David Williams, Finance Director, explained the process and reasons for this bond refinancing. He stated that the deadline for paying off the bond and refinancing was soon approaching and this process would mean a savings to the City as the rates are lower now than when the bond was taken out.

Roll Call Vote on Ordinance:

Yeas: Hinds, Omo, Quimby, Blake, Hart, Verville, Pagurko, Winglass

Nays: None

Ordinance Passed Unanimously. 8-0

2) Public Hearing - Ordinance: Amendment Chapter 13. Refuse, Article 3. Landfill Fee Schedule Section 13.34. Nonpayment (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 13. REFUSE
Article 3. Landfill Fee Schedule

Section 13-34. Nonpayment

Add to the text below the underlined language:

Failure to pay any fee assessed hereunder shall constitute a violation of this Section and shall result in refusal of access to the facility and prohibition of any additional dumping of material or other use of the facility. In addition, any fee that remains unpaid thirty (30) days after the date of billing, will be assessed interest at the same rate as assessed against unpaid ad valorem property taxes as set annually by Council in accordance with Section 7-101 of the Code.

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

Roll Call Vote on Ordinance:

Yeas: Hinds, Omo, Quimby, Blake, Hart, Verville, Pagurko, Winglass

Nays: None

Ordinance Passed Unanimously. 8-0

Chairman Wyman stated this would become effective in 21 days.

D. Consent Agenda: 6:25 PM

3) *Acceptance of the Minutes to the meetings of January 4, 2006. Motion by Councilor Hart, second by Councilor Verville to accept the Consent Agenda as presented. All in favor.

E. Time Devoted to Residents to Address the City Council: 6:25 PM

Philip Jermain of 937 Washington Street spoke regarding condo projects that have taken over the working waterfront in many states and have led to complaints from the owners of the condos dealing with smells, parking and noises from fishing industry boats. Mr. Jermain stated that having the “Bathport” structure used solely for residential use in the downtown zone is not a good use of the space.

F. Ordinances, Resolutions and Orders: 6:30 PM

Item 4) Ordinance: Amendment LUC Contract Rezoning Article 16, Section 16.12, 99 Commercial Street (first passage)

Chairman 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 16, by adding Section 16.12, as follows:

SECTION 16.12 - 99 COMMERCIAL STREET CONTRACT ZONE

A. District Designation

The property designated for this Contract Rezoning is the property located on Commercial Street being identified as Lot 272 on City of Bath Tax Map 26, dated April 1, 2005.

B. Findings

The property is located in the Downtown Commercial (C1) and within the Historic Overlay districts. The City Council makes the following additional specific findings:

1. The building, presently known as the BathPort, was initially constructed in 1973 for the purpose of mixed use consisting of commercial and residential uses.
2. The applicant proposes to demolish the existing structure and replace it with a new structure.
3. Without the creation of a contract zone, the maximum height allowed in this portion of the C1 Zone is 35 feet under the provisions of Section 8.07(C) of the Land Use Code.
4. Contract Rezoning is allowed on this parcel because it is allowed in the Historic Overlay District under the provisions of Section 8.12(/) of the Land Use Code.
5. The developer has offered the following voluntary conditions in exchange for the Contract Rezoning. For the Contract Rezoning the developer will:
 - a. Construct brick sidewalks with granite curbing and downtown-style streetlights including bases, conduits, and wiring, and street trees (specific design to be approved by the Planning Board prior to construction), along the east side of Commercial Street from the south side of the Waterfront Park to the north side of their lot (tax map 26, lot 272).
 - b. Construct the walkway along the river, as shown on the site plan, with pavers (specific design and style to be approved the Planning Board prior to construction), install new Waterfront Park-style lighting including bases, conduit, and wiring along the walkway, to provide public access to the waterfront. Convey to the City of Bath, by acceptable Quit-Claim Deed, title to the walkway and the riprap and banking property between the walkway and the Kennebec River.
 - c. Cause the removal of the wooden utility poles (designated as poles numbered 4 through 9) on Commercial Street and the associated wires and to replace with underground wires and conduit, and to pay all of the cost of removal and installation of underground wiring.

d. Allow public use of the lobby of the building, for public meetings and events, subject to the approval of the Condominium Association, said approval not to be unreasonably withheld. The agreement for such use shall be approved by the Planning Board and approved by the City Solicitor as to enforceability.

C. Zoning Provisions Affected

This Contract Rezoning is intended to only modify the maximum height allowed on this parcel, under Section 8.07(C) of the Land Use Code, by allowing the construction of the building depicted on the Site Plan approved by the Bath Planning Board on December 20, 2005.

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, Historic District, and Subdivision approvals, granted to New BathPort, LLC., by the Bath Planning Board on December 20, 2005, and with the voluntary conditions listed in Section B(5) above.

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

John Hall, one of the project developers, gave a history of the site and a detailed report on the proposed project.

Robert Billington of 1 Old Sloop Lane spoke in favor of the project citing the history of building heights and pointing out that it would help the tax base.

Michael Ambler of 912 Middle Street asked Council to do some proactive, not reactive planning.

Shirley Lewis of 11 Harward Street cited the size and view blockage as her problems with the project.

Gordon Reed of 15 Mechanic Street, former Planning Board Member, gave an overview of the process that projects have to go through to get to the point where they reach Council approval. He praised the Planning Board for their work on this issue. Mr. Reed stated that the City needs responsible development, which he felt this project brings.

Thomas Perry of 1525 High Street spoke in favor of the project.

Jean Anthony of 1325 Washington Street spoke against the project stating it is too massive for the site and asked the Council table the item for further consideration.

Betsy Fear of 944 Middle Street stated she was against the project bringing attention to the blockage of view of the waterfront and asked Council to table the item.

Bernard Goodman of Georgetown asked that an easement of legislation be part of the agreement to let the City be able to continue to hold Heritage Days and observed that the area is a mixed use environment.

Elena Vandervoort of 2 Grove Street and representing Main Street Bath expressed support for the project stating that it would provide an increased tax-base, maintain continued and improved public access to the waterfront, increase sight lines to the river, increase the residential base in the downtown and will be consistent with the Smart Growth Maine long range plan.

Paul Johnson of 410 Washington Street spoke in support of the project and expressed his opinion that the City's skyline will not be impacted by this project and applauded the developers for trying to make the City better.

Judy Barrington of 26 Rocky Reach Road spoke representing the **Historic District Architectural Review Committee** Historic Preservation Society, giving their support of the project. Ms. Barrington stated that the 3 building design was architecturally pleasing. She reported that the group would have preferred a mixed use building but understood the flood plain problems.

Gene Nygaard owner of the Kennebec Tavern at 119 Commercial Street gave his support to the project.

Richard Hill of 71 South Street stated he was in support of the project, highlighting the improvements that have been done to the waterfront with no substantial loss of view and felt this project would fit into those improvements. He urged Council to support the Planning Board's proposal.

Philip Haskell of 660 High Street spoke against the project, expressing his opinion that this is not a proper use of the site. Mr. Haskell asked for a public referendum on the issue.

Joanne Adams of 10 Marshall Street spoke in favor of the project.

James Knight of 1513 High Street stated that the developers are local people that would promote creative growth in Bath and was in favor of the project.

Carl Stinson of 2 Schooner Ridge stated that his is local lawyer on Front Street within view of the proposed project and that he didn't feel a working waterfront would become a reality again. He said he had gone through that in the 1960's and felt it wasn't suitable for the downtown. He gave an overview of the Comprehensive Plan and how it pertains to this project. Mr. Stinson spoke in support of the project.

Jayne Palmer of 300 Front Street stated she was in favor of the project and said it would add vitalization to the downtown.

Amy Leonard of 24 South Street stated her opinion that the project doesn't fit the Comprehensive Plan of the City regarding the mixed-use provision. She also pointed out that the size was too massive and would be blocking views.

Edwin Rogers, one of the developers and resident of 5 Old Sloop Lane, gave a report on the architectural process of the project and the prospective tenants.

Rainer Pitthan of 38 Trufant Street cited what happened in his previous municipality when a residential development is put in over a parking garage and observed that it doesn't work. He was concerned that the Planning Board approached this project as designers rather than planners.

Edward Palm of 1 Seekins Drive spoke in favor of the project, stating that it would bring foot traffic into the downtown area and felt that the enclosed parking area would be a big benefit to the project site and the tenants.

Christopher Bartlett of 505 Middle Street spoke in favor of the project. He said that change is inevitable, compromise is necessary and pointed out that you can't please everyone.

Kerry Monahan of 131 North Street spoke in support of the project. She felt that the proposed building is beautiful, that it would be a positive for the City of Bath and noted that the tenants would use the City businesses.

John Hall, Edwin Rogers and the project architect answered questions from Council including issues such as the project being in a Flood Plain, builders, DEP approvals, building heights, project timetable, effects on Heritage Days and distribution of demolition debris.

James Upham, City Planner, explained the reason the 75-foot maximum height was missing from the second version of the Ordinance. He stated that the Planning Board approved the building at a maximum of 75 feet, but the Codes Enforcement Officer interpreted the plans to include the dormer and since there was a discrepancy in height, the 75-foot maximum was left out of the second version. Mr. Upham addressed fire protection issues and the conditions that the Planning Board put on the proposed project.

At 8:58 PM, Councilor Quimby motioned to extend the meeting past the 9:00 PM time limit to 10:00 PM. The motion was seconded by Councilor Omo. All in favor.

Motion by Councilor Quimby, seconded by Councilor Hinds to table the item to workshop to be scheduled in the next two weeks.

Vote on Tabling Motion:

Yeas: Hinds, Omo, Quimby, Pagurko, Winglass

Nays: Blake, Hart, Verville

Tabling Motion Passed 5-3

Item 5) Ordinances: Amendment LUC Zoning Map changing the zoning on the parcel of land at 65 Bowery Street from Marine Business Zone (C5) to Waterfront Activity Zone (R5). (first passage)

Chairman 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 APART HEREOF. THIS CHANGE SHALL BE INCORPORATED INTO AND BE PART OF THE OFFICIAL ZONING MAP OF THE CITY OF BATH. THE SPECIFIC ADJUSTMENT IS:

Changing the zoning on the parcel of land at 65 Bowery Street (tax map 20, lot 341) from Marine Business Zone (C5) to Waterfront Activity Zone (R5).

The applicant for this Zoning Map amendment is Dirigo Holdings, LLC (Bruce Poliquin).

Motion by Councilor Hinds, seconded by Quimby to put this item on the floor for discussion.

Bruce Poliquin, project developer, gave a brief overview of the proposed project.

Terrence DeWan, project landscape/architect, spoke regarding the details of the project relating to the compatibility with the Comprehensive Plan.

Motion by Councilor Verville, seconded by Councilor Quimby to waive the rules to continue the meeting to 10:15PM. All in favor.

Toni Rowe, real estate broker, reported the property has been on the market for two years with no takers.

Jim Upham, City Planner, explained the findings of the Planning Board during their deliberations regarding this project.

Motion by Councilor Verville, seconded by Councilor Omo to table this item to Workshop on February 8, 2006 at 6:00 PM.

Councilor Quimby motioned to take up the unaddressed agenda items at the March 1, 2006 Council Meeting. The motion was seconded by Councilor Verville and passed unanimously.

The items were as follows:

Item 6) Ordinance: Supplemental Appropriation Sewer Utility Fund (first passage)

Item 7) Resolution: Adjusting Tipping Fees Bath Landfill

Item 8) Resolution: Changing the fee schedule for permits associated with building, electrical, plumbing, heating, signs, driveways, blasting, fill flood area development certification of occupancy and home occupation.

G. Petitions & Communications:

H. City Manager's Report:

I. Committee Reports:

J. Old Business:

K. New Business:

The meeting adjourned at 10:10 PM with a motion by Councilor Quimby, seconded by Councilor Pagurko. All in favor.

Attest:

Mary J. White, City Clerk

Please note: These minutes are not recorded verbatim. A tape recording of the meeting is available for review in the City Clerk's office during regular business hours.