

REGULAR MEETING MINUTES
City Council of the City of Bath, Maine
Wednesday, September 5, 2007 6:00pm
City Council Chambers, Bath City Hall

Present: Councilors Hinds, Omo, Mulligan, Rogers, Eosco, Verville, Pagurko and Chairman Wyman.
Excused: Councilor Winglass

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.

Update on the “Pay As You Throw” program from Lee Leiner, Deputy Public Works Director.

Mr. Leiner reminded everyone that the “Pay As You Throw” would be starting on October 1st and that trash bags would be available for purchase in the next couple of week at Bath Natural Market, Big Apple, Brackett’s Market, Clipper Mart, CVS, Renys and Shaws. The prices of the bags will be five 15-gal. bags for \$6.25 and five 33-gal. bags for \$10.00. He said that people can pick up the Single Stream Recycling Magnets that tell what can and can’t be recycled at the landfill or City Hall. Mr. Leiner stated that there were bumper stickers available to put on your own boxes, laundry baskets and trashcans that can be used for recycling should you run out of room in the blue recycling bins. He gave out the Pay As You Throw question hot line phone number, 386-5409. He stated that there had been presentations going on around the City to groups and should any groups be interested in a presentation for their group to just give him a call. Mr. Leiner reported that there were two public meetings scheduled for September 17th at City Hall from 5pm-6:30pm and September 20th at the YMCA on Centre Street from 4pm-6pm. He concluded that recycling has increased about 1 ton per day already.

Update from Al Smith, CDBG Coordinator, on the Old Shipyard Land, LLC project.

Mr. Smith reported that the Old Shipyard Land, LLC project consists of preventing contact with the soils through relocating soils within a containment area, constructing fencing and constructing a cap on the site. This remediation alternative did receive approval from the MDEP through the volunteer response action program. Work had started at the time of the June meeting. The cost was estimated at \$100,000 because EPA that has funded the program has agreed that the project will be eligible to use some of the partial funding of the construction of the foundation that will be containing some of the soil. The cost of the remediation is now at \$200,000. This work on the foundation would have been done through the construction, but it does impact some of the remediation. Funding is allowed to go to \$200,000. Since the money is in the program, it was felt that it was worth going to the \$200,000 and making the loan at that rate. Mr. Smith thought Council should be updated as the loan had gone from \$100,000 in June to \$200,000. The \$200,000 will be able to be restored to the fund once the EPA opens up the annual period where communities that have revolving loans from programs and need additional money can apply for extra funding.

C. Public Hearings: 6:08 PM

1) Ordinance: LUC Section 16.15 – 832 Washington Street Contract 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:

Amend Article 16 by adding Section 16.15 as follows:

SECTION 16.15 - 832 WASHINGTON STREET CONTRACT ZONE

A. District Designation

The property designated for this contract zone is at 832 Washington Street, also designated as Lot 163 on City of Bath Tax Map 27, dated April 1, 2006.

B. Findings

The property is located in the Mixed Use Light Commercial (C2) District and the Historic Overlay District. The City Council makes the following additional specific findings:

- Contract Rezoning is allowed in the Historic Overlay District.
- The office building on the property is less than 10 feet from the north property line. The setback in the C2 zone is 10 feet with a Planning Board approved Setback Reduction Plan and 40 feet without one.
- The applicant desires to make certain improvements and expansions to the existing building consisting of removing an existing portion of the structure and exterior entrance down to the foundation and replacing it with an enclosed, two-story addition closer than 10 feet from the side property line but within the existing building footprint.
- The project is consistent with the mandatory conditions set forth in Land Use Code Section 18.20 paragraph D, 1.
- The applicant is proposing to make certain landscaping improvements to the property, which are not normally required of the Land Use Code, but which are consistent with the purposes of the Historic Overlay District.

C. Zoning Provisions Affected

This contract rezoning is intended to allow the modifications to the building as approved by the Planning Board on July 24, 2007, which will increase the volume area of the building, which encroaches into the existing setback area along the northerly line of the property.

D. Conditions of Approval

The approval is subject to all conditions of approval, which are part of the Historic District Approval, granted to AA Associates, LLC, by the Planning Board on July 24, 2007, including conditions that the shrubs must be planted and maintained according to the shrubbery plan presented to the Planning Board on July 24, 2007, that the garden under the sign will be 6 feet by 3 feet, that the annuals must be planted by May 20th each year, and that the shrubbery plan must be approved by the City Arborist.

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

Chairman Wyman opened the public hearing.

There was no Council, City staff or public comment so Chairman Wyman closed the public hearing.

ROLL CALL VOTE:

YEAS: Hinds, Omo, Mulligan, Rogers, Eosco, Verville, Pagurko,

NAYS: None

Ordinance Passed Unanimously. 7-0

Chairman Wyman stated that the Ordinance becomes law in 21 days.

- 2) Ordinance: Chapter 17. Vehicles and Traffic, Article 6. Stopping, Standing and Parking, Section 17-259. Parking Restrictions, Allen Lane and Royal Lane (first passage)**

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 6. Stopping, Standing and Parking

Section 17-259. Parking Restrictions

Delete:

Allen Lane

No Restrictions

Replace With:

Royal Lane

West Side: No parking.

East Side: From a point 20 feet north from North Street proceeding 77 feet, unrestricted parking; From a point 97 feet and proceeding north to Grove Street, no parking.

Motion by Councilor Rogers, second by Councilor Pagurko to waive the reading of the Ordinance. All in favor.

Chairman Wyman opened the public hearing.

There was no Council, City Staff or public comment so Chairman Wyman closed the public hearing.

ROLL CALL VOTE:

YEAS: Hinds, Omo, Mulligan, Rogers, Eosco, Verville, Pagurko

NAYS: None

Ordinance Passed Unanimously. 7-0

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

D. Consent Agenda: 6:12 PM

- 3) Motion by Councilor Pagurko, second by Councilor Omo to accept the minutes for the August 1, 2007 Council Meeting. All in favor.**

E. Time Devoted to Residents to Address the City Council: 6:13 PM

No residents spoke at this time.

F. Ordinances, Resolutions and Orders: 6:13 PM

4) Resolution: Establishing a Non-Profit Corporation – Bath Train Station

Chairman Wyman read the following Resolution:

**RESOLUTION TO ESTABLISH A
NON-PROFIT CORPORATION**

WHEREAS, the City of Bath is the owner of property commonly known as the Bath Train Station, located on the southeasterly corner of Water and Commercial Streets, and

WHEREAS, the Train Station building and grounds have been renovated and rehabilitated with the expenditure of substantial sums and considerable effort, and

WHEREAS, the purpose of the renovations is to provide an appropriate facility for the resumption of passenger rail service along the coast of Maine and to provide other services related to rail service and other transportation services, and

WHEREAS, it is appropriate for the City of Bath to provide an operating entity to manage and oversee the facilities and to advocate for the rail and transportation needs of Bath and the Region.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bath that the City of Bath act an incorporator and form a domestic non-profit corporation pursuant to the provisions of Chapter 13-B of the Maine Revised Statutes Annotated, said corporation being organized for the purpose of overseeing and administering the operation of the Bath Train Station and providing advocacy for rail and multi-modal transportation services within the City, promote tourism, and support other transportation and tourism issues, and for all other legal purposes, as may be permitted by law. Be it further resolved that the City Manager of the City of Bath is hereby authorized to execute any and all documents related to the incorporation of this entity and that the City Solicitor shall act as Resident Agent for the non-profit corporation.

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

City Solicitor, Roger Therriault, explained that this resolution was redoing what had been done last winter. He said that for purposes of brevity we wanted to get a corporation into place to handle the Train Station. That was done and his office acted as the incorporators. This was done for time purposes to get the Station up and running in a hurry. The corporation has approached Maine Municipal Association in regards to providing insurance for their directors and were advised that because the Council didn't act as the incorporator, they do not qualify under the definition as a quasi-municipal corporation. MMA suggested that reincorporation be done under the new corporation.

Jerry Provencher of 15 Winslow Court asked if the corporation would operate like the Bath Water District.

City Manager William Giroux replied that the corporation would run more like the Customs House Board and Mid Coast Center for Higher Learning Board.

VOTE:

YEAS: 7

NAYS: 0

Resolution Passed Unanimously. 7-0

5) Order: Appointment of City Arborist with a term expiration of September 2008.

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.

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

VOTE:

YEAS: 7

NAYS: 0

Order Passed Unanimously. 7-0

6) Order: Approving Preservation Agreement.

Chairman Wyman read the following Order:

ORDER APPROVING PRESERVATION AGREEMENT

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE PRESERVATION AGREEMENT WITH THE STATE OF MAINE AND THE DIRECTOR OF THE MAINE HISTORIC PRESERVATION COMMISSION, SAID AGREEMENT BEING ATTACHED HERETO, FOR THE GRANTING OF A PRESERVATION INTEREST IN ORDER TO PRESERVE THE HISTORIC INTEGRITY OF THE BATH RAILROAD STATION LOCATED AT 15 COMMERCIAL STREET, BE AND HEREBY IS APPROVED AND THE CITY MANAGER IS AUTHORIZED TO EXECUTE SAID AGREEMENT AND TAKE ANY OTHER REQUIRED ACTION REGARDING SAID AGREEMENT ON BEHALF OF THE CITY OF BATH.

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

City Planner James Upham explained that the train station had been rehabilitated with federal funds. He said that the Federal funding requires that the building be maintained as a historical building. The City has to keep the building historically intact for a period of time and that is why the Order needs to be enacted.

VOTE:

YEAS: 7

NAYS: 0

Order Passed Unanimously. 7-0

7) Order: Approving Amendment to Firefighters Contract

Chairman Wyman read the following Order:

**ORDER APPROVING AMENDMENT
TO FIREFIGHTERS CONTRACT**

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE BARGAINING AGREEMENT WITH THE MEMBERS OF THE BATH FIREFIGHTERS ASSOCIATION, LOCAL 1611, OF THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO, FOR THE PERIOD COMMENCING JULY 1, 2007 AND EXTENDING THROUGH JUNE 30, 2010, AND APPROVED BY THIS COUNCIL ON JUNE 20, 2007, BE AMENDED AS FOLLOWS:

ARTICLE XIII – CLOTHING ALLOWANCE

Increase to Four Hundred Dollars (\$400.00)

ARTICLE XVIII – TRAINING ALLOTMENT

Increase the training allotment Five Hundred Dollars (\$500.00) per man.

and

Provide for Firefighter Level I training.

THE TEXT OF SAID AMENDMENTS BEING ATTACHED HERETO, AND BE IT FURTHER RESOLVED THAT THE CITY MANAGER BE AND HEREBY IS AUTHORIZED TO EXECUTE SUCH DOCUMENTS AS MAY BE NECESSARY IN ORDER TO IMPLEMENT THESE AMENDMENTS.

Motion by Councilor Pagurko, seconded by Councilor Rogers to put this item on the floor for discussion.

City Manager William Giroux explained these items were agreed to but not reflected in the original agreement in June.

Councilor Hinds made a motion to amend the Order to read “Increase the training allotment “to” Five Hundred Dollars (\$500.00) per man”. Councilor Pagurko second the motion.

VOTE on the Amendment:

YEAS: 7

NAYS: 0

Amendment Passed Unanimously. 7-0

City Manager William Giroux thanked the fire fighters and police officers for the job well done saving lives during the recent fire at the Schooner Ridge apartments.

VOTE on Amended Order:

YEAS: 7

NAYS: 0

Amended Order Passed Unanimously. 7-0

8) Order: Referendum Ballot - Joining Regional School Unit

Chairman Wyman read the following Order:

ORDER FOR REFERENDUM BALLOT

WHEREAS, LD 910, "An Act to Permit Public Schools in the Lower Kennebec River Area to Regionalize and to Achieve Efficiency and Improve Quality," has been enacted by the Maine Legislature, and

WHEREAS, this Act provides an opportunity for the City of Bath and the municipalities of School Union 47 to consolidate and form a new School District, and

WHEREAS, the Act, in Section 21, requires the Municipal Officers of each of the eligible municipalities to submit the Act to a vote of its residents on or before November 6, 2007.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that the question below be submitted to the voters of the City of Bath, in referendum ballot form, at the November 6, 2007 municipal election and that the Clerk prepare appropriate ballots for determination of the question to be voted which is stated as follows:

"DO YOU FAVOR JOINING WITH OTHER SCHOOLS IN THE LOWER KENNEBEC RIVER AREA TO FORM A REGIONAL SCHOOL UNIT?"

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

City Manager William Giroux explained that there were two laws that the City can regionalize under LD910, which is the City's local law, and LD499, which the rest of the state is planning on using. He stated that there would be a workshop in the near future to explain the new laws.

Richard Hill of 71 South Street asked how this would affect the spending limitation.

City Solicitor Roger Therriault explained that the spending limitation will not control school costs under this law. The spending limitation will not affect the City's portion of the school budget. The school budget will be handled like an SAD.

Jerry Provencher of 15 Winslow Court asked if Wiscasset and Westport would be included in the scenario for this question and if they were added, would that change the financial scenario.

City Solicitor Therriault stated that this referendum question would only deal with the combining with Union 47.

City Manager Giroux stated that adding Wiscasset and Westport would change the funding but that would be addressed later.

VOTE:

YEAS: 7

NAYS: 0

Order Passed Unanimously. 7-0

9) Order: For Public Hearing on Charter Changes – Board of Education

Chairman Wyman read the following Order:

ORDER FOR PUBLIC HEARING

WHEREAS, the Maine Legislature has enacted LD 910, “An Act to Permit Public Schools in the Lower Kennebec River Area to Regionalize to Achieve Efficiency and Improve Quality,” which provides for the City of Bath and the municipalities of School Union 47, to consolidate and form a new School District, and

WHEREAS, the voters of the City of Bath will determine by referendum vote at the November 6, 2007 election whether or not to become a participating member of this new proposed School District, and

WHEREAS, the provisions of LD 910, “An Act to Permit Public Schools in the Lower Kennebec River Area to Regionalize to Achieve Efficiency and Improve Quality,” in Section 7, supercede the provisions of the Bath City Charter, and

WHEREAS, there are provisions in the Bath City Charter relating to the Department of Education, Board of Education, election and administration of the School Department that are in conflict with the provisions of LD 910, and

WHEREAS, it is necessary and appropriate to consider amendments to the Bath City Charter to reflect the approval of Bath becoming a participating member in the new School District.

NOW, THEREFORE, BE IT ORDERED by the City Council of the City of Bath that a public hearing shall be held on Monday, September 17, 2007, at 6:00 p.m. in the Bath City Council Chambers for the purpose of hearing public comment on proposed Charter revisions designed to bring the Charter into compliance with the provisions of LD 910. And be it further ordered by the City Council of the City of Bath that the Clerk of the City of Bath be and hereby is ordered to cause notice of the public hearing to be published in a newspaper of general circulation within the City of Bath at least seven (7) days prior to the scheduled date and time of the hearing.

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

The City Solicitor explained that the public hearing had to be held on September 17th in order to be able to get ballots printed in time for absentee voting and that these changes would be contingent on the passage of LD910.

Richard Hill of 71 South Street asked if people who didn’t want the school budget taken out of the spending limitations should come to speak an the public hearing.

Mr. Giroux explained that the Legislature had taken the school budget out of the spending limitations.

VOTE:

YEAS: 7

NAYS: 0

Order Passed Unanimously. 7-0

10) Order: Landfill Closure Bond

Chairman Wyman read the following Order:

ORDER

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF BATH AS FOLLOWS:

THAT PURSUANT TO THE AUTHORITY OF THE CITY COUNCIL UNDER SECTION 1014 OF THE CHARTER OF THE CITY OF BATH AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 617 OF THE CHARTER OF THE CITY OF BATH, THE FOLLOWING PROPOSITION FOR THE ENACTMENT OF AN ORDINANCE FUNDING LANDFILL CLOSURE, SAID BOND ORDINANCE BEING ATTACHED HERETO, BE SUBMITTED TO THE VOTERS OF THE CITY OF BATH AT A MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2007:

“SHALL A BOND ORDINANCE BE AUTHORIZED IN AN AMOUNT UP TO, BUT NOT TO EXCEED, \$3,500,000.00 FOR THE PURPOSE OF LANDFILL CLOSURE?”

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

Donna Pellegrino of 1575 High Street urged Council to continue with the closure of the landfill due to the health hazards.

Jeffrey Rogers of 3 Regatta Lane spoke in support of the closure of the landfill.

Richard Hill of 71 South Street stated that he believes the City needs to take whatever steps necessary to relieve the gas smells and step up the recycling efforts but felt the landfill should stay open.

David Pinkham of 1508 High Street stated that the smell from the landfill had not improved and supported the closure.

Ruth Gay of 1528 High Street told Council the smell had improved slightly this summer during the day but at night the smell was bad as ever. She supported the landfill closure.

Gerald Provencher of 15 Winslow Court agreed there were problems at the landfill but there have been some improvements. He stated that the problems were not going to go away even if the landfill is closed.

Michael Silevinac of 1517 High Street spoke regarding the money made from the landfill and that the success rate of the gas remediation project increased with the capping of the landfill. He asked why the landfill was not open on Saturdays.

Edna Nadeau of 6 Garden Street stated that she had been collecting signatures on a petition “Not to close the Landfill”. She said the people she had spoken with did not want the landfill to close and these people wanted the citizens of Bath to have the vote on whether the landfill should close or not.

Lisa Harmon Cutlip of 1492 High Street asked that Council go forth and spend whatever money is needed to cap the landfill and make it safe for the future.

VOTE:

YEAS: 4 (Hinds, Mulligan, Rogers, Pagurko)

NAYS: 3 (Omo, Eosco, Verville)

Order Passed. 4-3

G. Petitions & Communications: 7:30 PM

City Clerk, Mary White, presented the Council with petitions containing 91 signatures of qualified voters which stated “We the undersigned residents of the City of Bath want the decision to close the Bath

Landfill Facility to be set aside until it is decided by a majority of the voters of the city in an election process.”

Motion by Councilor Verville, second by Councilor Omo to put this question to referendum.

After a lengthy discussion, the Council directed the City Solicitor to amend the Bond Ordinance previously passed to have an explanation of what a Yes or No vote would mean to the closing of the landfill and bring it back to them at the September 17th Council meeting.

Councilor Omo withdrew his second, so the motion failed.

H. City Manager’s Report: 7:45 PM

City Manager Giroux reported on the following items:

- Tax Mill Rate at 16.7% up by 3%

I. Committee Reports: 7:46 PM

There were no committee reports.

J. Unfinished Business: 7:46 PM

There was no unfinished business.

K. New Business: 7:46 PM

11) Appointment of Kenneth Desmond as alternate Codes Enforcement Officer with term to expire January 2008.

Motion by Councilor Pagurko, second by Councilor Rogers to appoint Kenneth Desmond as the alternate Codes Enforcement Officer. All in favor.

12) Appointment of one member to the Bath Planning Board to fill a position with a term to expire September 2009 and two members with terms expiring September 2010.

Councilor Pagurko brought the nominations from the Council Interview Committee of Amy Fitzpatrick, term expiration September 2009, Robert Oxton, term expiration September 2010 and Paul Fraser, term expiration September 2010 to fill the vacant seats on the Planning Board.

Vote on Nominations:

Yeas: Hinds, Omo, Mulligan, Eosco, Verville, Pagurko

Nays: None

Abstention: Rogers

Motion by Councilor Pagurko, second by Councilor Hinds to go into an Executive Session to discuss a Real Estate Matter per 30-A M.R.S.A. §405(6)(C) and a Legal Matter per 1 MRSA §405(6)(E). All in favor.

Motion by Councilor Verville, second by Councilor Pagurko to come out of the Executive Session. All in favor

The meeting adjourned at 8:01 PM with a motion by Councilor Omo, seconded by Councilor Hinds. All in favor.

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.