

**REGULAR MEETING MINUTES**  
**CITY COUNCIL OF THE CITY OF BATH, MAINE**  
Wednesday, January 8, 2014 6:00 PM  
City Council Chambers, Bath City Hall

Present: Councilors Brackett, Merrill, Paulhus, Lockwood, Wyman, Sinclair, Mitchell, Winglass and Madame Chair Eosco.

Also in attendance were the City Manager – William Giroux, City Solicitor - Roger Therriault and City Clerk - Mary White.

Madame Chair Eosco led the Pledge of Allegiance and City Clerk White called the Roll.

Presentation: Annual Customs House Report by Daniel Donovan, Customs House Board of Directors Chairman. Mr. Donovan cited the new improvements to the building such as the window restoration project on 3 sides of the building (north side to be done this year) and the installation of the new natural gas boilers, which should be a cost savings of heating the building of 20-25%. He stated there is a 100% occupancy rate and recognized the great co-operation between the City and the Board. Mr. Donovan gave a history of the Board members and the expertise they bring to the Board. Councilor Lockwood reported that the City had received three preservation awards for the preservation efforts that were being done at the Customs House. Two of the awards were State-wide awards from Maine Development Foundation and Maine Preservation and one from Sagadahoc Preservation.

**C. Consent Agenda 6:05 PM**

**\*1) Minutes of Previous Meeting – December 4, 2013 and Items J7 and J8. (motion to accept)**

Councilor Mitchell made a motion to accept the Consent Agenda as presented. Councilor Winglass seconded the motion. All were in favor.

**D. Time Devoted to Residents to Address The City Council 6:06 PM**

Madame Chair Eosco made the public and Council aware of the new technology that had been installed in Council Chambers, citing a new time clock to be used for the timing of remarks from the public to comply with the Council's Working Rules and a new speaker system so people attending the meetings would be better able to hear Council and Public remarks.

No residents spoke at this time.

**E. Resolutions, Orders and Ordinances 6:09 PM**

**2) Butler Head Land Sale – moved to Unfinished Business Section**

Mrs. Sharrigan asked Council to postpone this item as their lawyer had not yet arrived but was expected soon.

Councilor Winglass made a motion to move this item to the “Unfinished Business” section of the Agenda. Councilor Lockwood seconded the motion. All were in favor of the moving motion.

**3) Ordinance - LUC Map Amendment Request – Maine Maritime Museum Discussion (first passage)**

Madame Chair Eosco read the following Ordinance:

### ORDINANCE

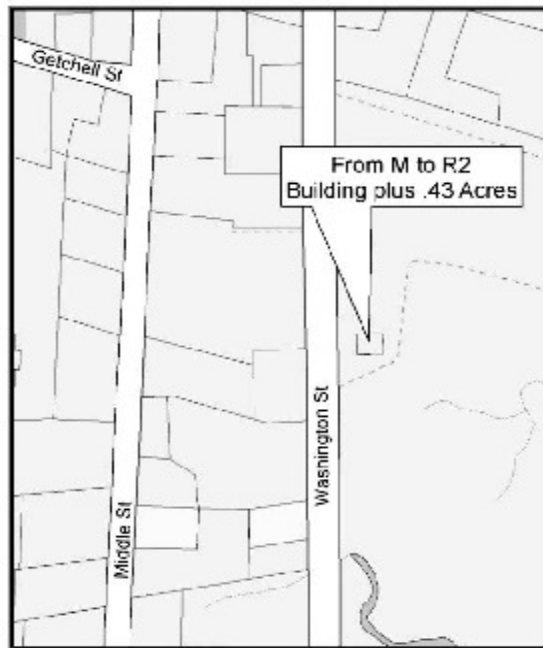
WHEREAS, THE CITY COUNCIL OF THE CITY OF BATH, AS PART OF THE ADOPTION OF THE BATH LAND USE CODE ON JULY 19, 2000, EFFECTIVE AUGUST 9, 2000, DEPICTED THE BOUNDARIES OF ALL LAND USE DISTRICTS ON A ZONING MAP OF THE CITY OF BATH, ALSO DATED JULY 19, 2000, INCORPORATED BY REFERENCE INTO THE LAND USE CODE 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 of an 18,795 square-foot portion of lot 17 on tax map 38 from Museum District (M) to the Residential-2 District (R-2).**

**The affected area is more particularly described on the boundary survey and legal description submitted with the application, sealed by Bruce W. Martinson, Surveyor (#2137).**



**Land Use Code Map Amendment**  
Map 38, Lot 17-1, From M to R2

Councilor Winglass made a motion to put this item on the floor for discussion. Councilor Paulhus seconded the motion.

City Planner Andrew Deci explained the Maine Maritime Museum has no museum use for the building and wants to sell it and needs this change as it would be much more sellable as a residential parcel.

Amy Lent, Director of the Maine Maritime Museum, said the building has always been rented out and never used for museum purposes and would like to sell it as residential property.

**ROLL CALL VOTE:**

**YEAS: Brackett, Merrill, Paulhus, Lockwood, Wyman, Sinclair, Mitchell, Winglass**

**NAYS: None**

**Passed unanimously. 8-0**

Second passage was set for February 5, 2014 at 6:00PM.

**4) Ordinance – Approving Pine Tree Waste Contract (first passage)**

City Manager William Giroux explained that there is a law pending in the legislature which would impose a penalty on landfill towns. He said if this law passes it will cause problems with the contract and would like the item removed from the agenda.

Madame Chair removed the item from the agenda.

**ORDINANCE APPROVING  
PINE TREE WASTE CONTRACT**

**WHEREAS**, the City of Bath and Pine Tree Waste, Inc. have reached an agreement for continuation of curbside trash pickup, recycling pickup and other specialty collections, and

**WHEREAS**, the term of the Contract exceeds One (1) year, and

**WHEREAS**, the Charter of the City of Bath, pursuant to Section 1102, requires that Contracts involving payment of monies out of appropriations of more than One (1) fiscal year be approved by Ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Bath that the Contract with Pine Tree Waste, Inc., commencing July 1, 2013 and running through June 30, 2018, and attached hereto, be and hereby is approved and the City Manager is authorized to execute same on behalf of the City of Bath.

**5) Order – Accepting the gift of a new scoreboard from Fields of Our Future organization.**

Madame Chair Eosco read the following Order:

**ORDER**

**WHEREAS**, the Fields for Our Future organization has continued their fundraising efforts in order to provide funding for improvements to McMann Field and other City recreational facilities; and

**WHEREAS**, the organization has raised sufficient funds to purchase a new scoreboard for the field; and

**WHEREAS**, the organization now wishes to make the purchase of a new scoreboard and to donate the scoreboard for installation at the McMann Field Complex; and

**WHEREAS**, City Staff have been involved with the design of the new scoreboard.

**NOW, THEREFORE, BE IT ORDERED** by the City Council of the City of Bath that the City Council does hereby accept, with thanks and gratitude, the donation of a new scoreboard by the Fields for Our Future organization for McMann Field, and to authorize the City Manager and the Director of Parks & Recreation to give final approval as to the design of the scoreboard.

Councilor Wyman made a motion to put this item on the floor for discuss. Councilor Mitchell seconded the motion.

Kay Beveridge of Arrowsic, representing the Fields of Our Future organization, explained to Council the scoreboard was a gift from an anonymous donor and Bath Saving's Institution was going to pay to get the scoreboard installed. Ms. Beveridge gave an overview of specifics of the scoreboard.

**VOTE on Order:**

**YEAS: 8**

**NAYS: 0**

**Passed unanimously. 8-0**

#### **F. Petitions & Communications 6:25 PM**

##### **Judge Crowley's investigation report on the Midcoast Hospital property sale.**

Councilor Sinclair made a motion to have the entire document read. There was no second. Motion failed.

Councilor Sinclair requested that a complete copy of the report be included in the minutes so it would become part of the permanent record. Madame Chair Eosco agreed to this request. *A copy of the original document is on file with the hard copy of these minutes on file in the City Clerk's Office.*

Madame Chair Eosco stated that this process had been a big learning experience for her, City Council and the citizens of Bath. She said there were things that she would do differently in the future. Ms. Eosco reported that during her recent Freedom of Access class she learned that it was highly recommended that not only the MRSA Section be stated but the specific reason for an Executive Session be listed also.

Councilor Mitchell stated that a lot of lessons had been learned during the past year. He said that looking back it would have been better to have slowed the process down.

City Manager Giroux apologized for not giving the Council the guidance they needed and agreed the process was done too hastily, but said the process would be done differently in the future.

Councilor Paulhus thanked Judge Crowley for the work he had done on the report. He said he felt the same as the other Councilors that the process had gone too quickly and that this would not be the practice in the future. He stated that the Council had learned a valuable lesson in making sure any transactions done are open to the public.

Councilor Merrill stated that she felt the Council had done the best they could have with the information they had to work with.

Councilor Sinclair stated that his suggestion to do the investigation in the first place was to help restore community faith in the City Council and hoped that would happen once the community reads the report. He said the report did bring forth the realization of violations of statutes and municipal code and the Council had received poor advice in respect to each of those. Councilor Sinclair explained that these instances of violations would not have been realized if the questions had not been asked but did say that if the questions had been asked in a different tenor, things may have gone more smoothly.

Councilor Mitchell stated that the hostile way the questions were asked in the beginning did not lead to a productive way of handling the situation and hoped that in the future issues would be addressed in a more friendly manner.

It was the consensus of the Council to open the discussion up to the public.

Kyle Rogers of 80 Court Street thanked Council for getting the report out to the public. Mr. Rogers stated that his concerns were with the advice given to Council regarding this matter.

Madame Chair stated that any personnel issues would be dealt with in Executive Session.

Mr. Rogers stated that back in 2008 there had been a possible buyer but the buyer went away and then he urged Council to let the public know how they were going to deal with the personnel matters in a broad sense.

Madame Chair reminded the public the report was available on the City Web site and a hard copy was available through the City Clerk's office and thanked Judge Crowley for all his work on the report.

#### **G. City Manager's Report 6:42PM**

City Manager Giroux reported that City staff had been working very hard to keep streets and sidewalks clear and safe and asked that the public call the Manager's Office with any concerns.

#### **H. Committee Reports 6:43 PM**

There were no Committee Reports.

#### **I. Unfinished Business 6:43 PM**

**Item E2. Butler Head Land Sale was taken up at this time.** *The following is verbatim.*

**Madame Chair Eosco:** Moving on to unfinished business, which means moving back to the Butler Head land sale. I think initially here we're looking for some background information on the history and then ultimately the Council can choose to move forward tonight or not.

**City Manager Giroux:** While he's (Atty. John Bannon) setting up ...the Council discussed this as a real estate matter in Executive Session and it appeared to indicate that they were not interested in moving forward with any kind of land transfer so the Council didn't take any action on this, didn't debate it publically, and the Sharrigan's and their attorney pointed out that they would appreciate an opportunity to make their pitch to the Council. And obviously, as we informed the Council earlier, there appears that there could be some violations there and if the Council doesn't choose to be interested in a negotiation and a transfer then we would probably move those issues forward, and so this is their chance to try to convince the Council there should be a transfer. Obviously, this is property that the Council has previously voted to transfer a conservation easement to the Kennebec Estuary Land Trust (KELT) on this, and their waiting for, to make this transfer, and are now ready and this is the last boundary that needs to be made to make this transfer. So I simply give that as background. Attorney Bannon and the Sharrigans make their pitch.

**Madame Chair Eosco:** Councilor Sinclair

**Councilor Sinclair:** I appreciate that we did give clear direction and actually issue an Order. Councilor Paulhus and I brought this matter before the Council more than a year ago and the Council unanimously approved an Order directing that the easement be put in place. Is this the last thing that stands in the way? And can we finally get that done and resolved?

**City Solicitor Therriault:** I think there is one other thing and Jack Witham is here to address the plan that goes with the ...you mentioned it when we spoke today. I'm having a brain cramp on what we called it.

**City Manager Giroux:** Jack, you'll have to come up, I'm sorry, so that the people can hear.

**City Solicitor Therriault:** It's the one last step that goes within ... (inaudible).

**City Manager Giroux:** It's a good question so that we, you know, depending on how the Council deals with this tonight we can finally move forward with the conservation easement.

**Jack Witham:** Yes, Jack Witham, I'm board president of Kennebec Estuary Land Trust, I live in Arrowsic. The easement itself is finalized. We have a document we are working with. We're waiting for this issue to be resolved so the boundary lines can be finalized. We've raised money and paid for a full land survey of the entire property and so that has been completed. So this is the final line... we have the baseline data which goes with the easement and is practically ready to go. So I would think that once this issue is resolved, we can move forward with getting the easement closed.

**Madame Chair Eosco:** Councilor Winglass

**Councilor Winglass:** Jack, while you're up there...Appreciate all the work that you do with KELT and on its behalf. As far as your group's decision on something like this, do you guys have a feeling, one way or another, about this.

**Jack Witham:** Certainly no strong feelings. You know, this is a small portion of the entire property and it's not going to impact the value of the easement significantly either way because it is such a small amount of property. You know the concerns would be what future uses would be allowed there and what would happen there. And do we, as an easement holder, have to get involved in litigation, or whatever, that's always the biggest concern that we have. As we do our easement monitoring, we have to make sure that all the provisions of the easement are enforced and maintained. If they're not, you can get into legal issues and problems which we like to avoid when we can.

**Councilor Winglass:** I think we all do. Yeah, that answers my question. I had heard something like that; I just wanted to hear it from you. So I appreciate your comments.

**Jack Witham:** All right. Thank you.

**Madame Chair Eosco:** Thank you.

**Atty. John Bannon:** Members of the Council. I am John Bannon. I'm from Murray, Plum, and Murray at 75 Pearl St. in Portland, ME. I'm here tonight representing the Sharrigans with regard to their request to purchase a very small parcel from the City of Bath. I do want to apologize, first off, for being late tonight. I had allowed myself an hour to get here, but even Portland seems to have developed a rush hour at 5 o'clock, which never previously existed. It took me about a half an hour to get from my office to the bottom of the Franklin St. arterial. You know Portland, growing up, that is a very short distance so I apologize for that, sincerely.

I have come into this matter relatively late. I first met with the Sharrigans about it in May of 2013 which is actually quite a ways ago, but I know that is a shorter period of time than the rest of you have been dealing with this. I took the time today to look over the video tape of your meeting on February 6<sup>th</sup> of 2013 when you approved the granting of the easement to KELT and which there was some brief discussion of the Sharrigans' request, but nothing conclusive that I could see, at least, from the tape. There seem to be some, I think, over-concerns about the nature, or exaggerated concerns, or unnecessarily great concerns about the nature of over-proposing and I want to try to clear the air. For starters, the Sharrigans are fully in favor of the purposes of this easement. I think that most everybody in their neighborhood is; I don't think anybody would argue with that. They're not arguing with the importance of preserving the forests of the City or recreational opportunities, conservation values, et cetera. They also recognize, and I've spoken with them about this, that they do have some ordinance compliance issues that they have to deal with. There are some buildings out there, at the moment, that are constructed on property to which the City owns the fee interest, which is the primary interest in the land, so, that technically speaking, there is an encroachment. There is also an issue of whether the Sharrigans need permits. I'm taking that off the table; the Sharrigans need to get after-the-fact permits. I'm not here to argue to you that you should let my clients go merrily on their way and purchase this land as though nothing ever happened. They made mistakes. They made reasonable mistakes in my estimation, or at least no more unreasonable than any of my clients make when they decide whether they need a building permit to renovate or construct a building. For example, one of the buildings they renovated had been on the property since 1941. They had thought they didn't need a building permit in order to renovate an existing building. Wrong, but understandable. The City had granted them a septic system easement in 1989. They inferred that the City would have expected them to build a bathroom structure which is really all the so called bath is. And wrong! But an honest mistake and one that is curable. So that... we're not going to argue about that. I am here to try and mold (?) a solution to a problem that can get a whole lot bigger and messier and unpleasant if we want to let it happen. And I submit that it is possible, extremely possible, to preserve all the purposes of the conservation easement and the City's concerns about the Butler Head property, while still allowing the Sharrigans an opportunity to procure the violations by purchasing the property that they need to cause their buildings to be completely on their property and also to comply with the setbacks applicable to those structures.

Now I understand from the February 6, 2013 meeting that there has been, was a lot of concern at that time perhaps a driving concern. I heard for the easement that there had been a number of out-sales from the Butler Head parcel that were threatening to change the character of the property. That's a totally legitimate concern. I would like to point out, though, that the Sharrigans have been attempting to purchase this property since 2007. It didn't start in 2013 and there was some sort of sense that they waited until the last minute and tried to come forward, but I have a letter from Bill Giroux dated June 29, 2007 in which the Sharrigans say, "We heard through neighbors and city officials that land behind ours and other Butler Head Cove residents may be soon transferred to a land conservation group. Before this transaction happened, we are asking that this easement property could be acquired/purchased by us. The easement was granted for a septic system that has been installed." So, the Sharrigans did not wait until the last minute. They, effectively, got in on the ground floor. Ironically, and I don't want to make a big deal of this, but it's still worth mentioning, five years after the Sharrigans simply asked for an opportunity to purchase property, which was never answered one way or another, the City Council approved a sale of property to the Stinson's without a great deal of controversy from, what I see, the Council. We've got nothing against the Stinson's, they are welcome to whatever they could get, but the Sharrigans were in line first. To suggest that they're the late comers is unfair, I submit, when someone who came before the Council five years later did obtain the release they asked for in the form of being allowed to purchase property from the City.

There is a very distinct difference between the purchase we are proposing in this case than any of the other purchases that have occurred in the past or any that might occur in the future. Now I have not had the opportunity to see the conservation easement. I understand that it prohibits future sub-divisions. Is that

correct? No one is saying yes, but I believe that is what it says. So this problem will not arise again, once the easement is in place. But, there has never been another situation in which the property that someone on Butler Head proposed to purchase had already been encumbered by an easement. And, for people who don't work with easements a lot, an easement may seem like a relatively small interest in property, but it is actually not, it ties up a property pretty drastically. Once you give somebody an easement to use your property a particular way, you still retain the right to use it in any other ways that are practical, but still, if one person has the right, as the Sharrigans do in this case, to use a rather large tract of land to install a septic system wherever they need it. That necessarily limits what the City, with the same parcel. So as part of the value, and I would submit, much of the value of this property has already been conveyed to the Sharrigans in the granting of that septic system easement. However, that's point one.

Point two is, that the Sharrigans' propose to give a 1/3 of that easement back. They are not simply proposing to purchase all of the easement and just take whatever they got through the easement. They don't need it all. They're not going to try to go for broke. They are trying to purchase the minimum amount of land they need in order to legalize buildings that are on their property and to legalize the setback. So, first I want to ask you, if the Council is familiar with the survey I have up on the easel? Some people are nodding.

**Madame Chair Eosco:** I think it's useful for you to point things out on it.

**Atty. Bannon:** OK. Thank you. This isn't terribly, terribly clear from a distance, but the present area of the septic easement that was granted to the Sharrigans in 1989 goes from this pine tree, down to this point Roman Numeral I, up to Roman Numeral II, over this gravel parking area up to Roman Numeral III, and then back down to the pine tree (points to map). So this is a fairly substantial, I'll tell you exactly how fairly substantial this area is, it presently measures 24,265 square feet of area. I'm kind of wondering where that figure came from and although I didn't get complete clarification of it, I looked back at the minutes of the meeting when the easement was approved and some members of the Council were interested and in fact were wondering if this was more land than the Sharrigans' needed. And Councilor Hart, at that time, indicated that this piece of land was all ledge and cannot be used for anything else anyway. It's also worth noting, at that point, that the Council was aware of the encroachment at that time. But that was not considered, at that time nor should it at this time, in my estimation, to be an obstacle to allowing this problem to be cured. Some of the councilmen said that the Council should pursue the problem, or the boundaries of this parcel and get them clarified. Another member said it was brought to the Council's attention by the people, meaning the Sharrigans, and that they offered to buy the piece of property even before they got the easement. Again another indication the Sharrigans' ... (inaudible) trying to get the City's attention, they've had trouble getting it. I don't care about that now, but now that we do have your attention I do want you to know the diligence with which they have been pursuing it. That statistics ... the area of the easement for purchase is only 16,980 feet of that easement. The portion of the easement today they proposed for purchase goes from the pine tree, I mentioned before along a wire fence and through some trees, and up to this point two, which is to allow proper setbacks for this building, up to point three, over here to, I will continue in a moment, but I just want to (inaudible) and then back down again (pointing to map). So that the area that I am going over with my fingers, I'd mark it with a pen if I didn't think it would look bad, the City gets back. The Sharrigans already have easements over here that are perpetual. They have no obligation to give them back to the City, but they don't need them, and as a gesture of good faith, they will give them back. One additional area that the Sharrigans' need is a very small parcel up here, that is to the north of the bunkhouse, that is about 30 feet by 50 feet, about another 1,500 feet of the property that wasn't a part of the easement. OK so that's new, or is that really new and unencumbered property? No! As it turns out this property encumbered by a 12-foot right-of-way that passes through it. This property, which the City has fee ownership, is also encumbered by an easement. Then again, those of us who understand easements know, that is a substantial (inaudible)... on how property can be used.



I think, perhaps, the most important statistic about this proposed purchase is that it affects, according to my calculations, less than point three percent (.03%) of the Butler Head property. Less than point three percent (.03%). I do have a map of the area that can show just how small this parcel is. If the Council would like to see it I can pass it out, but I think the Council is familiar with this area, but let me know if you'd be enlightened by seeing this as a diagram. Perhaps I should take upon me to enlighten you then. What I've done is matched up tax map #4 and tax map #7 in order to show the properties that are in the immediate vicinity of the Sharrigan parcel and the Butler Head property. And I've drawn an enormous arrow down to a lot that I am sure you cannot see. I will pass these out and if you could pass them along-there should be plenty of them here for everyone. I guess I'll keep one for my own use. But, to the extent that they're, again, acknowledging the importance of the Butler Head property as a natural resource, the amount that the Sharrigans are (inaudible)... cannot be said to be more than minute. I won't stand up here all night, fortunately, I'll let that get passed around and then I'll wrap up. As you look at the diagram you'll see a fairly large Sharrigan printed on this chart with an even larger red arrow pointing to tax map #4, lot #7, which, even on this blown up version, is barely visible. And as you can tell from this diagram (pointing to large map), the additional area the Sharrigans' wish to purchase surrounding microscopic Lot #7 is pretty much microscopic itself. I have included the area they wish in calculating the less than .03% portion of the Butler Head property.

There are a couple of final considerations. One of them is that, since the mid 1980's, the City has been actually taxing the Sharrigans for all these buildings as though that was their real estate and as though that were legitimate. That doesn't make it legitimate. I'm not trying to say that it does. None the less, as you look at the equity of the situation, and the practical good that can be accomplished in this situation, the City does derive some extra revenue by being able to have buildings on this property that it can tax as opposed to having to take the action to have them removed. That will not accomplish anything of value to anyone. To conclude we have an opportunity to, we have two choices here: 1) one is to take a relatively absolutist approach to the Butler Head property and state that there shall never be any out sales ever under any circumstances where the result is good or bad, or; 2) we can look at this particular proposal on its merits. There aren't going to be any other proposals, as far as I know, under the conservation easement that's going to KELT (Kennebec Estuary Land Trust). Please consider whether it is worth maintaining an absolute possession and at the same opportunity to come to grips with a set of encroachments and violations that have been going on for 30 years that need to be cured, that can be cured, and can be cured without the outlay of any City staff time whatsoever. I don't read Voltaire, but I understand Voltaire said something to the effect that the perfect should not become the enemy of the good. In a perfect world, perhaps, one could be absolute and say that there shall be no ....but the Council has the opportunity to accomplish something good-something that's good for the Sharrigans, something that's actually good for the City as well, and I do urge the Council to look at this particular proposal, not a policy, not a philosophy, this particular proposal on its merits and to approve, or to approve with conditions, the Sharrigans' purchase of the property. Thank you. I will sit down unless anyone has questions of me.

**Madame Chair Eosco:** Council do you have any preliminary questions?

**Atty. Bannon:** Seeing none. Thank you very much.

**Madame Chair Eosco:** I would like to open this up for other people who are here to talk on this matter.

**Tom Barrington:** I'm Tom Barrington. I represent, first of all, the Forestry Committee, and I live in north Bath. I'll take a minute to summarize what we've presented to all you Councilors in writing. I just want to confirm one thing that you probably already know, I am an absolutist. The sale of any part, excuse me, why is the clock showing five minutes...

**Madame Chair Eosco:** We're doing five minutes because they're doing ...

**Tom Barrington:** He was up for 15, excuse me.

**Madame Chair Eosco:** He's a presenter, so that's different.

**Tom Barrington:** Sorry. This is the summary of what you already know. This is another example of whittling away at the Butler Head property which we've all recorded in various documents which is intended to be conserved for habitat and ecology and public enjoyment and recreation. It starts with the Comprehensive Plan, says it's not wise to divide this no matter how small because it will lose the value, of conservation and recreational value. The Management Policy for Butler Head says it shall not be subdivided in any way. We're all standing here tonight with the drafted easement, conservation easement, which is consistent with all of our discussions in the past and what our objectives are prohibits any subdivision. I'd like to go on to say that, as a public citizen, not necessarily representing the Forestry Committee, it is a very bad financial transaction. If you do the arithmetic, this property, the easement property (pointing to the map), and if you take the current assessment of the property lot flagged to this area, this area could be worth 26 times the amount being offered here for this deal. Now, if you accept the deal, if you accept the principle that's been expressed that this has no value, then there is this little piece here which is not part of the current easement, and by the same arithmetic, this is worth twice of what's being offered, so I don't think that's a very good deal. Any questions?

**Councilor Brackett:** I'm just curious where you got the 26 time figure? I just don't understand it.

**Tom Barrington:** I went to the Assessor's database and found the assessed value for this, that so many dollars per sq. ft. or acre, and I took this map and took the areas from this and if I took that rate-per-acre based on this and applied it to this it would be worth 26 times of the \$7,500 that's being offered for the whole deal.

**Councilor Brackett:** Perfect. I understand. Thank you.

**Tom Barrington:** And I did the same process for this area (pointing to the small corner described above).

**City Manager Giroux:** I appreciate him pointing that out. Also, just to point out -that begs a question, then. How did we come by that number? We didn't, that is an offer (\$7,500) from the Sharrigans. Obviously the City hasn't negotiated because the Council has not indicated they choose to negotiate at this point. So, this is not a negotiated figure at this point. This is an offer being made by the Sharrigans. Tom is pointing out that he thinks it's a very low offer.

**Tom Barrington:** Any other questions? Thank you.

**Madame Chair Eosco:** Councilor Sinclair.

**Councilor Sinclair:** Mr. Barrington, Mr. Bannon made a big deal of the fact that roughly a half acre of the parcel over which the Sharrigans' had an easement that there's not much else the City can do with it. Isn't that really the point of having a green space, is that we not do much with it and that we keep it open and in its natural state for all of the citizens to enjoy?

**Tom Barrington:** Yes, that would be the objective. The principle that's been expressed in these documents that I quoted is that it shall not be divided for any reason.

**Councilor Sinclair:** And was this the feeling of the whole Committee?

**Tom Barrington:** Yes

**Councilor Sinclair:** That this was a bad idea? Not just your own personal belief?

**Tom Barrington:** Yes. We worked this out together. The letter we sent you was jointly reviewed and we all thought that is the way we wanted it to be stated.

**Councilor Sinclair:** Thank you.

**Elizabeth Haskell:** My name is Elizabeth Haskell and I am chairman of the Bath Community Forestry Committee (BCFC) and I am also a resident here in Bath at 184 Whiskeag Rd. I did just want to get up and mention that you have a Nov. 16, 2013 letter in your notebooks that the Committee did send to you and I know it was in last month's agenda so I hoped you refreshed your mind a little bit this time. I want to point out that we are looking at a bit of a bigger picture and I know that the Planning Office in this City has worked tirelessly putting together a Comprehensive Plan over the years and the reason we mention that in the letter is in hopes that you will go back and look at the Comprehensive Plan. It (the letter) referred to Chapter 2, for example, page 2 and I'll just read a line from it. It says, "Natural resources such as Merrymeeting Bay, the New Meadows River, the Kennebec River, Winnegance, Thorne Head, Sewall Woods, Butler Cove, and the City parks are equally vital spaces in the Cityscape. These green and blue spaces are augmented by the undeveloped parcels, the cemeteries and the new park with its wind turbine that rests on the former landfill."

And in Chapter 4, page 13 at the bottom of the page it says, "Large blocks of undeveloped land add greatly to the rural quality of Bath and also provide habitat for many birds and mammals. If these blocks are broken up, by even minor development, the value of the habitat to many species of animals is greatly diminished." I think we have to keep in mind our Comprehensive Plan and what Bath wants to do for its future in preserving forest lands. But my question to you in resolving this situation is, why do we have a Comprehensive Plan, why do we have the Bath Forestry Committee, why do we have KELT? It's because we have to fight for all of these little pieces in order to keep the big picture. I do have some sympathy for someone who is looking to purchase the property, but in the long run, I think if we break down and commit to these small parcels, no matter if it is only .03% of the property, that is giving up more than we should and the Forestry Committee is against this.

**Madame Chair Eosco:** Anyone else from the public who would like to speak? Well Council I think we need to be making a decision tonight whether or not to move forward with the sale or not move forward with the sale. Moving forward with the sale entails a lot more detail. That would be just the starting of another process. I'm going to turn to Roger (City Solicitor) and look for guidance.

**City Solicitor Therriault:** I can't say it better than you did. I think it's a threshold decision by Council as to whether to move forward to consider the sale of the property. And how they wish to develop the terms and conditions of the sale or if there is no support for that to tell the folks tonight that there is no support for that and the Council is not supporting the sale of the property. I think that threshold needs to be made first, and depending upon what that is, we can deal with the next step if there is one.

**Madame Chair Eosco:** Councilor Lockwood

**Councilor Lockwood:** Can you just go over a little bit; I've only been on the Council for a year. This seems to have been going on a lot longer than I've been here. About the easement -it was for the septic, is that correct? It can't be used for anything else?

**City Solicitor Therriault:** It should not be used for any other purpose than the subsurface wastewater disposal system.

**Councilor Lockwood:** OK, so I'm...obviously the septic is not taking up that entire space. Why does the easement continue in perpetuity when the septic is already there? Why wouldn't it have been shrunk to just cover the septic? I don't know how easements work.

**City Solicitor Therriault:** When it was originally proposed, it was uncertain as to where it would go because there is a lot of ledge and area that would not pass the test that would be required. It's just not acceptable property for that, so they created a parcel, if my recollection is correct, large enough to be able to find a place in that area where the septic tank and leach field could go. That's why it's larger than it otherwise would've been.

**Councilor Lockwood:** So you can't alter that easement just to include what they are actually using?

**City Manager Giroux:** You couldn't take away the easement they have, not unless they volunteered.

**Councilor Lockwood:** That's what I'm asking.

**Councilor Winglass:** And isn't that part of what they are proposing? By taking away some of this land?

**City Manager Giroux:** They are proposing to shrink the size of their easement in exchange for title to part of the land. It does seem like a large area. Who knows why the Council chose what recommendations were made, why it was done so large.

**City Solicitor Therriault:** It may be important to understand, if I may, in terms of title law, if you convey the fee interest the easement goes away. They have now acquired the title to the entire piece, so there is no more easement at that point.

**Madame Chair Eosco:** People in the audience we're having a hard time concentrating up here with that background noise. Sorry about that.

**Councilor Merrill:** I'm wondering if we could ask Scott (Codes Officer) a simple question. I'm wondering first of all what type of foundation the bunkhouse is on and whether the building could be moved?

**Codes Officer Davis:** I will defer to the Sharrigans, I know they're here. I think it's some post, isn't it? Yeah, the bunkhouse is on posts ...it doesn't have a concrete foundation under it? (Here there is an inaudible exchange between Sharrigan, in the audience, and Davis, at the podium.) It's on concrete posts.

**Councilor Merrill:** Is there room within the existing property owned by them to move the bunkhouse in such a way that it would be legal to have it?

**Codes Officer Davis:** No because the minimum water setback they can have is 75 feet, and that's with a waiver from the Planning Board, and the front setback is 25 feet and the lot is 100 feet deep. So you take away 75 from the water and 25 from the front, there is no where left to put anything.

**Councilor Merrill:** And the City has known that these building existed on this property for approximately how long? Is there any....

**Codes Officer Davis:** I think it was during the '05 reval, I think that's, revaluation, is when I think this came to, at lease, my attention. I don't know if before me knowing about it, if anyone knew about it, but from memory the '05 reval, revaluation, the City had showed that there was a building out there that doesn't seem to be on their property.

**Councilor Merrill:** Was that the bathhouse?

**Codes Officer Davis:** The bathhouse, yes.

**Councilor Merrill:** Was the bunkhouse there from 1941?

**Codes Officer Davis:** Well, I'll have the Sharrigans help me. Correct me if I'm wrong, but from the assessing records and from talking to the Sharrigans, they bought their property in 1981 and they just had a (inaudible)...at the water's edge and they secured approval to enlarge that, and they did that, and then my understanding is they took the roof of the original cottage and used that to build another cottage up on the bank uphill from the original cottage – they had approval to enlarge. We have pictures in the assessing file showing a building uphill from the cottage that's by the water - they were connected by a walkway.

**Someone from audience (Mr. Sharrigan?):** It was an old building at one time.

**Codes Officer Davis:** OK. I was under the understanding from talking to Mrs. Sharrigan that you took the roof off the original cottage and used that to build another one, in addition to enlarging the one you got the permit for. And that building is now what's the bunkhouse moved uphill that's shown on the plan; here is the bunkhouse (pointing to map). '89, I believe from memory, is when it was built.

**Councilor Merrill:** It looks like it has a deck that goes into the area that's in ownership (inaudible)....

**Codes Officer Davis:** On three sides, it has a deck.

**Councilor Merrill:** And part of that deck is not on the Sharrigans' property?

**Codes Officer Davis:** It's down towards the water. It's out over, I think it's beyond high tide, isn't it?

*DISCUSSION BETWEEN DAVIS AND AUDIENCE MEMBERS ABOUT EASEMENT IS NOT UNDERSTANDABLE HERE.*

**Codes Officer Davis:** That's not in question. They had a permit to enlarge the cottage and the deck and they did that.

**Councilor Merrill:** In '05 were issues raised; was there a warning given; was there fines (inaudible) ...?

**Codes Officer Davis:** Yeah, there was a letter, we wrote them and said you appear to have a building on our land and I think that (inaudible)... to resolve the problem.

**Councilor Merrill:** I'm not sure how we're going to address this. I know there are fines which are associated with building code violations. What would, and I am not saying or proposing that we do this, but if we were to assess a fine for these unregulated buildings, what would the nature of those fines be?

**Codes Officer Davis:** I'd have to go back into the codes – when the buildings were built – and Roger could probably help me out some. He's been here longer than I have. It's probably in the neighborhood of, you know on paper, like a \$100 a day for each day the violations exist, which would be a countless amount today..... Realistically, if we take someone to court, we hardly ever get that value, we usually settle for somewhere in between what they think is right and what we think is right it's usually less than a \$100 a day times 30 years, or how ever long this has been going on.

**Councilor Merrill:** Is it common to then renegotiate the property boundaries so the building can exist?

**Codes Officer Davis:** Yeah, it happens now and then when someone will build something that's too close to the line, it's not uncommon at all, or they'll buy some land from their neighbor to meet the setback instead of having to tear down the building or sometime have to remove part of the building. That happens too if they can't – sometimes in Bath the lots are so small the neighbor doesn't have the land to sell them because their lot is substandard, but if the neighbor has the land to spare ...it happens not uncommonly.

**Councilor Merrill:** I'm just thinking as you're talking, I can relate to the situation I can remember when my family first purchased land in Maine down in South Berwick. My mom was building a house and had the whole foundation dug and she'd had all the lines measured and everything done and the City came and said you've got to move your whole foundation. It's too close to the road. And it wasn't knowledge she had. I am not sure where the fault lay. She ended up having to .... they didn't have to redig the foundation. You know I sympathize with the stress of the situation and the financial stress something like that can cause. Our property happened just to be on a quiet road without any conservation land around it. And I think that really complicates this issue for me because were there no public space involved with such a high purpose then this would be easy for me to resolve on this side of well everyone makes mistakes and let's see how we can make this better for everyone. But I find it a very complicated issue because despite the size of this property were talking about, the importance of it far outweighs any measurement you could take for this – you know a measuring tape or survey or anything like that. You know that makes it really difficult.

**Madame Chair Eosco:** Councilor Sinclair

**Councilor Sinclair:** I'd like to ask the Solicitor's opinion on the question of, if we decide as a body, to give the Sharrigans one year to correct the current violation to bring their property within codes, but decline to sell (streaming breaks up) we could consider is to extend to the Sharrigans a one year grace period and further extend to them, that if they correct all of the errors that exist on that parcel as of today, if they correct them all within that one year that we would forgive all of the fees, historical fees, that Scott (Davis) was just talking about, in answer to Councilor Merrill's question. That we extend that offer and at the same time clearly decline to convey to them any more land from Butler Head. It seems that that gives them a fairly painless way out of their present predicament while at the same time preserving the entire body of land as we had intended when so long ago we unanimously agreed to put that conservation easement in place.

**Councilor Lockwood:** Clarify the corrections.

**Councilor Sinclair:** I don't know what all the violations are. Scott (Davis) presumably has given them a list or could quite rapidly.

**Codes Officer Davis:** Realistically the choice of moving the bunkhouse and bathhouse. There's nowhere on their land to put anymore buildings by today's codes. It just won't fit.

**Councilor Lockwood:** I just wanted to clarify that.

**Madame Chair Eosco:** So would you like to put that in the form of a motion?

**Councilor Sinclair:** I repeat the motion. I think we had a second.

**City Clerk White:** So give the Sharrigans one year to make the property to meet code and the City would not ...

**Councilor Sinclair:** If they bring the parcel into compliance within that one year grace period, the City will not pursue... Roger help me out here.

**City Solicitor Therriault:** .....fines, penalties, and fees.

**Councilor Sinclair:** .....for the historical violations, but that we explicitly decline to sell them any property.

**Madame Chair Eosco:** And we have a second for that.

**City Clerk White:** Yeah. Councilor Merrill

**City Manager Giroux:** And just to clarify for my... because I didn't listen good enough. When would the easement happen, now or later?

**Councilor Sinclair:** They already have an easement.

**City Manager Giroux:** No I mean KELT. You're not going to wait a year?

**Councilor Sinclair:** It would happen right away. I want to find a way to remove that barrier for getting that done, give them a painless way to cure their ills, not fully painless, but at least they don't incur the historical fines and also protect the land.

**City Manager Giroux:** So we protect the land very soon because it's ready to go. OK.

**Madame Chair Eosco:** Any preliminary Council Comment? Staff Comment? Scott (Davis)

**Codes Officer Davis:** A fine point, bringing their property into compliance means removing the bunkhouse, their bathhouse is on our property, and there are no zoning violations – it's just a trespass – they built a building on our land without our permission. Technically complying with your motion doesn't address the bathhouse, bringing their land into compliance, I don't want to leave ...

**Madame Chair Eosco:** OK, so amend the motion to...

**Councilor Sinclair:** At the point where you had "bring the parcel into compliance" I would add "and cure any present trespass on City owned land.

**Madame Chair Eosco:** I'm going to ask her (City Clerk White) to read that back. Could you read that please?

**City Clerk White:** Councilor Sinclair made a motion to give the Sharrigans one year to bring their property within codes and cure the trespass on City property and the City will not pursue fines and penalties for historic violations, but explicitly decline to sell them any property.

**Councilor Sinclair:** One small change. I want it to be clear that it is important to us that the present violation and trespass be cleared up, so I am proposing that we only forgive the historical violations, if they do cure the trespass and the violations within that one year grace period. After you listed "cured the trespasses", I would say, and if they do so within that one year grace period, then the City will forgive...

**Madame Chair Eosco:** Could you just read that one more time?

**City Clerk White:** OK.

**City Manager Giroux:** The Sharrigans weren't hearing you so we should do it loud.

**City Clerk White:** Councilor Sinclair made a motion to give the Sharrigans one year to make their property within code and cure any trespassing on City property and if they do so, within the one year grace period, the City will not pursue fines and penalties for the historic violations, but explicitly decline to sell them any property.

**Councilor Sinclair:** We should probably see if Councilor Merrill still wants to second.

**Councilor Merrill:** Yes, I second.

**Madame Chair Eosco:** We'll go back to preliminary Council comment.

**Councilor Lockwood:** The attorney for the Sharrigans mentioned a letter that was sent to the City in 2007. Does anyone remember ....

**City Manager Giroux:** Yeah, we had staff conversation about it at the time and we may well have had discussion with Council in executive session. That's why it wasn't pursued. At the time we also had a discussion going with one of the neighbors and we couldn't agree on a price. I can't say for certain, but we knew, I certainly knew, back when I first came here, in '05 or '06, it came up shortly thereafter and there's records in Scott's file, like the letter is in there, but my sense is there wasn't any intention, in the light of the violations, of moving forward with the sale at that time. And that's the guidance I got last year. I will say if the Council moves forward with this, there is fairly clear guidance for staff this time and I think for the Sharrigans and everybody, if that's how you choose to go. That's a pretty clear motion.

**Councilor Brackett:** I just listened to this tonight and (inaudible)... I wasn't sure coming to the meeting ... I think I'll support this tonight, I think it's a step in the right direction.

**Madame Chair Eosco:** Any other preliminary Council comment? I'm going to open it up for public comment.

**Mardouni Sharrigan:** Sharrigan, Wiscasset. People have mentioned the fact that we're chipping away at this big piece of property. What we are asking for, it's been like ten times and some has been sold that really wasn't supposed to be sold and nobody said anything about that. Recently there's been some more sold and it was a lot more than we even talking about that we want to pay for that we wanted to buy in the first place and we're trying to keep our area as small as possible by having three surveyors come in here and juggle these lines around which could never be done. And they all admit it. One of them was Rouillard, one of the head surveyors around here, he could never make this come out right so we went by what we thought was the boundary lines when we bought the place. We thought we had waterfront property, all of this we found out from the surveyors that it can never come out right if you started up in Richmond and started measuring it won't come out right. And the amount we are talking about buying is so small that I don't think people realize what was already sold, when it wasn't supposed to be sold, but there were people who knew people so they bought it. That's all I have to say.

**Madame Chair Eosco:** Any other public comment?

**Esther Sharrigan:** Esther Sharrigan, Wiscasset. (Inaudible) ...telling us we have to move our building. The bathhouse with propane, with heat, the sink, a flush toilet, that the well is hooked up to and the only building that is heated. Where are we going to move it? We've got no land to put it on. We can't afford to do something like that. You say maybe not the bunkhouse, maybe move the bunkhouse. But we can't put that on this little piece of land here (pointing to map) because it's too close to the water. This is



private property. Mr. Hummer owns this land and this little piece was in question and this little piece of land was in question. So I don't know where we are going to put those buildings. What are we going to do – burn them down? So then we have to go to an outhouse on town property. We can't put an outhouse there. We can't use it year around like we have. We can't have our grandkids and great grandchildren coming up. This is just one little building that's the size of a single-car garage with a half a loft that you can't even stand up in, to sleep, they are sleeping on the floor. Five people – we've been as many as 18 people when we've got a whole family up there. I really don't know. You've got us over the barrel. We have no place to go. You say move the building to be compliant. Where do we move it to? You won't let us buy the land. We can't move this way, we can't move that way-this is private land. Nobody's telling us where we can put the building then. What're we going to do, put it on a flatbed trailer and move it out of there? The road isn't wide enough. We've got trees there that the forestry committee won't allow to be cut down because of a big arm in that maple tree up by Jim Kline. I don't know where we're going to put it. Thank you.

**Atty. Bannon:** Councilor Merrill asked when the City became aware of the encroachments and was told in 2005. I'm sure that was a good faith estimate by the codes enforcement officer. I will submit to the board minutes of the meeting of November 15, 1989. I didn't make these. Your Council made them. They include the statements ... Councilor Kiernan indicated there apparently appears to be an already existing encroachment onto the City's property and wonders if Council approves this as an easement or are they condoning this encroachment upon City property. Councilor Kiernan indicated it was clear from the sketch that there is an encroachment on City property, but does not tie the encroachment with the easement. Council should pursue the problem and get it clarified. Chairman Tibbetts stated that Council and Planning Board actually walked that land several years ago and the encroachment is nothing new. It was brought to the Council's attention by the people and offered to buy the piece of property. Planning Board was well aware of it and so was Council. I submit this to the Chair.

I hear where you're going with this I think, Madame Chair and members of the Council. You're talking about a situation that's existed since 1989 and the Council is stating that it's too important to protect .03% of Butler Head property or approximately 16,000 square feet of land. It's too important to do that than to allow these elderly people to somehow (inaudible) themselves in this situation. I hope you can look yourselves in the mirror tomorrow and remember that in December of 2012 this Council sold the property to Lucy and Skip Stinson that was larger than this with no strings attached which had no prior easement. If you can look yourself in the mirror and say I don't mind that I sold that property to the Stinson's and that I feel good about stopping the Sharrigans from purchasing something to solve their problem, then God help you.

**Madame Chair Eosco:** Any more public comment?

**Councilor Winglass:** This is one of these situations that probably, definitely, should have been dealt with 25 years ago and you know it wasn't clear. None of us were on that Council then; I don't think Bernie was on that Council. I hear the plight of the folks and I have heard from the forestry committee. I'm probably not their most favorite Councilor and actions pass that I've been involved with, to some degree anyway. I think when we put the deal together for Butler Head; it was a really good deal for KELT. They got umpteen acres out there and what... the document we tried to get passed still is not passed addresses this issue of land sale. That document has not been signed, it is not enforced, it is unfinished and that again is somebody's fault, probably our fault, but that's the way it is. The fact is their attorney is correct. We did sell some land to Skip and Lucy about a year ago that was approved by everybody here except Councilor Lockwood. (Merrill said she opposed it.) OK, but the Council overall. And I would submit that Councilor Meadow's mother would support helping these folks out in this situation. It's not a good situation. It's not a situation that I don't think any of us contrived or came up with, but when you're looking for a solution that works for the most equitable in what has transpired in this area for ever since I've been on the Council and prior to that. And there's a lot of people who have

places out there and all are pretty lucky. I also applaud what we're trying to complete with this document for the transfer of the rest of this property to finally end these kinds of discussions on what else is going to be done with the remaining property. This is something we didn't even have to do as far as coming up with some of this land, or giving this land to KELT, this was a huge gesture on the part of City Council. I don't like the price, \$7,500 is way too cheap, but off the top of my head I wouldn't have a price. Twenty-six times sounds a bit high, but I would think that is something that we could figure out to make this thing work. So anyway, I would be in favor of supporting some sort of a situation to resolve the problem without having these people burn these buildings to the ground, because they're right, there really isn't anywhere to go with them. So that's (inaudible)...removal of the buildings. What are you going to do? Have the fire department go out and burn it down?

**Councilor Mitchell:** Just to refresh my memory. I've spent quite a bit of time out there looking around. The original lot of land 50x100 lot of land is not a lot of value to them unless something is added on. You've got 25-foot setbacks on each side so you're going to have a house in the middle about the size of a 2x4. The existing easement there now that they're enjoying at the moment – does that easement satisfy their need for the additional rooms that they need to encapsulate the buildings into compliance? (Someone answered NO).

**Madame Chair Eosco:** This is the easement for the septic not building?

**Councilor Mitchell:** That's what I am saying, the easement for the septic, because it's far larger than what they were originally going to do. I just want to know the square footage of that for the original.

**City Manager Giroux:** It's a question for Scott.

**Codes Officer Davis:** Based on the map the red dashed line is the septic easement. The way the setbacks work out here is the first 150 feet back from the water has overlay zone applied to it and with just a building permit the water setback is 150 feet. But with a Planning Board waiver, you can get down to a 75-foot setback. So the complicated answer to Tink's (Mitchell) question is if they were to acquire the fee to their septic easement, and got a waiver on the water setback from the Planning Board, it would be somewhere over in here (pointing to map) that they could move the bunkhouse so that would solve the zoning problem, but the septic easement runs right through the bunkhouse and does not include this little spur up here. So they would be acquiring that and there would be room to move the bunkhouse and meet the zoning regs with a setback waiver from the Planning Board. That's not a given that you can get that. There's a process you go through and you have to demonstrate with plans a bunch of plans and environmental stuff. Maybe they could, maybe they couldn't. I don't make those kinds of decisions. You have to demonstrate you're not causing soil erosion, cutting too many trees, or endangering any endangered species or rare plants. It requires a fair amount of consultants to weigh in on a thing to show you can meet those standards. Other people have secured them in similar geographic and environmental situations. If that answers your question.

**Councilor Mitchell:** Well, I think it does.

**Codes Officer Davis:** The septic easement would not solve the problem of where the bunkhouse is today. But, it would give them room to stick it over here somewhere ...I don't exactly where their septic system is. The wastewater drain field is shown on here (map) over in here and the building will have to be a certain distance from the septic field by code that applies to septic systems. But, it would probably be somewhere over here by this outhouse where they could put the bunkhouse and solve their zoning issues. They wouldn't let the bunkhouse stay where it is.

**Councilor Brackett:** I appreciate Councilor Winglass' observations and insight into that. And yes, we did sit here, and it was divided as I recall, to vote to sell the Stinson's some land. But, it's just me; I don't

think we're comparing apples to apples here on the sale. If we're just saying well you sold it, you got to sell this, well that's one thing, but I don't look at it that way. Very different set of circumstances.

**Councilor Sinclair:** A fair amount has been made that the Council may have known for a good long while that the property was in violation. The other side of that coin is that the Sharrigans also knew they were overtaxing their easement and they had buildings that were not on their own property. And they've known that for at least as long as the Council has known it. And they've chosen not to do anything about that. The motion that has been put forward and is on the floor now, gives them an opportunity, at least, to let them escape any penalties for having left the violations in place for an extremely long period of time.

**Councilor Merrill:** So we've been taxing them and collecting taxes on the bunkhouse and the bathroom facility as well as the main house? Paul's (Assessor Mateosian) not here?

**Codes Officer Davis:** Paul's not here. I don't know about the money end of it but the tax assessing records have shown these buildings since the reveals that happened after the construction. Generally in ten-year blocks so you wind up with a window when something appeared, if it's built without a permit. If it's built with a permit we know when it appears. I suspect from looking at the tax maps, we have been taxing them on the buildings based on the assessing records. I don't know if they're current or if they've been paid (inaudible)...

**City Manager Giroux:** If the assessor sees a deck, he's going to let the code officer know there's a deck there and he's going to start taxing it.

**Councilor Merrill:** I guess I'm wondering where the communication breakdown occurred as to whose responsibility it is that these buildings are still there? So if the City has been gleefully collecting money from these folks on these buildings knowing that they were not allowed to be on the property for X number of years, does that put us in a position of complying with the elicited location of these buildings?

**City Solicitor Therriault:** Violations. Time doesn't make it go away.

**Councilor Lockwood:** It's hard to tell from the Assessor's database; there are three listings but they're all the same assessment. They're all identical with different pictures of different buildings so that might have to be clarified if you're going down that direction.

**Madame Chair Eosco:** We do have a motion on the floor that we're discussing.

**Councilor Brackett:** Maybe we should read it one more time.

**City Clerk White:** Councilor Sinclair made a motion to give the Sharrigans one year to make their property within code and cure any trespassing on City property and if they do so, within the one year grace period, the City will not pursue fines and penalties for the historic violations, but the City explicitly decline to sell them any property.

**Councilor Brackett:** And it has a second?

**City Clerk White:** It has a second.

**Madame Chair Eosco:** So if you feel you're ready to take a vote on this motion, we can do that. Just remember that if this motion doesn't pass there can be another motion.

**Councilor Paulhus:** Just a quick question. Does anyone know the amount of money we're getting from taxing those particular buildings?

**Councilor Lockwood:** \$2,288 for all of them. There's multiple houses on one lot so the one lot is being taxed.

**City Manager Giroux:** Well, we wouldn't be taxing our own property; we'd be taxing their property which sits on our property.

**Councilor Lockwood:** But it's not broken down by the buildings. We'd have to look at Paul's (Assessor) calculations for that.

**City Manager Giroux:** It's also possible that... you know it's a slippery slope to go back. The fact of the matter is, there have been violations, like Councilor Sinclair said, known by the City, known by the property owner. You know you go back at least 25 years, it appeared, and whether or not they were willful violations ...like Mr. Sharrigan said, there was some confusion about who owned property...who knows ...really you know whether the City has taxed them is, to me, not really the issue. The issue is, how are you going to deal with this. Are you going to help them solve their violations? Are you going to cause them to cure them through this motion? The Council realizes this is a tough decision; these are judgment calls that you have to make.

**Madame Chair Eosco:** Any other final Council comment before we take a roll vote? Councilor Paulhus and then I'd like Councilor Wyman to return before we take a vote.

**Councilor Paulhus:** Now this is definitely a difficult decision I will admit. As mentioned before, Councilor Sinclair and I were the prime sponsors for protecting the Butler Head region. And one of the reasons we did come to that conclusion was from the sale to the Stinsons of the property, which I also opposed. One of the reasons I opposed it was for the very reason we are here again talking about the sale of property. Listening to this has been another kind of learning experience unto itself because I feel that the City needs to do a better job with these violations in respect to if there is a problem, if there is a situation like this, the City needs to be a little more proactive with this, if there has been 20 years or 25 years, or whatever, I think we need to do a better job solving those situations. I don't know what the details of that would be, but I think we need to do a better job so situations like this aren't coming to us years in the making. It's too bad that it's come to this but I think the intent of Council, when we voted to do the easement to KELT and everything, the intention was to protect it all. I don't know how other Councilors...Councilor Winglass mentioned his thoughts and I don't know how other Councilors might feel about it, but that's where I'm coming from with this situation. It's not easy being a Councilor. We don't always get the easy questions.

**Councilor Winglass:** To respond to Councilor Paulhus' musings that... I agree that the City showed a great lack of enforcement in its own laws and so, again, it's another one of the reasons I have to feel...rather than have these people burn down their buildings and possibly move them ...and more in a way of mutual admission of wrongdoing, more of a way of right doing and saying OK ...because I think this is more of a situation of maybe no fault. You know, I think that, or, I don't know whose fault it was. I'm really not trying to put a fault on it. I'm trying to find a solution that will maybe bring in some revenue into the town by the sale of a piece of property. Revenue to be able to tax some buildings that are then on that property and revenue that would obviously go forward in perpetuity and be, go up in value as taxes go up. And again, you know, I would think this property would bring in a pretty good piece of money for allowing a ½ acre of land that Council decided to ease to KELT. I don't know, it's a huge piece of land to me out there. I appreciate that we have this land, especially in such a small town as our own to grant this piece of land for no development and no taxation. We're effectively raising the taxes on everyone with this decision. I just want that, you know, to be understood and on record that why, just another reason that I don't see this as probably the best course of action. Again, that document is not signed. It is not, it is not a legal document at this point so suggest anything other is incorrect.

**Councilor Lockwood:** I'm just thinking about the cost. Looking at the assessor's database, currently the lot that they, the land .13 acres about 50x100 feet, about 5,000 square feet, right. That's assessed at \$50,000. This lot they are trying to acquire, this piece of land is about 17,000 square feet. That's more than three times the size, and I don't know how Paul (Mateosian) does it, if it's an exact proportion, or ...

**City Manager Giroux:** Pretty close.

**Councilor Lockwood:** You know we are looking at over \$150,000 for that land so maybe Mr. Barrington's number is not that far off, for that type of land, waterfront on the Kennebec. You know.

**City Manager Giroux:** A couple of statements, if I could. All along when we have dealt with Sharrigans' property, we've wanted a survey because we've wanted it known exactly where things lie and there is some confusion over the boundaries. I can't speak for 25 years ago and when the Council was first aware, but we were all anxious. Roger (Therriault) was anxious to see a survey. We would not be able to prosecute without one. Regarding, if the Council didn't move forward with the motion that is on the floor, not to suggest that you won't, I do think we would have some difficulty in negotiations that would include exactly where the boundary, where the City might think, the Council might think, that the boundary might be. We know what the Sharrigans would like the boundaries to be. And then again what the price would be and whether or not they could afford what the City Council decides the price would be. The City Council, if it chooses to sell, would have to take public action to decide whether to get it appraised or not as is part of the new policy. So I just put that on the table. If some Councilors want to go in that direction, I think that's a little complicated, too. And it may not result in a (inaudible)... It's up to the Council whether you even want to explore that or not.

**Councilor Lockwood:** That's my next part of this. If we come up with a price that's unaffordable, what happens?

**City Manager Giroux:** I think you'd be back at the situation where you are with Councilor Sinclair's motion.

**Councilor Winglass:** But you would have at least...I think that's possibly the reason why this issue has not been dealt with and that is a lack of interest and pursuance on the City's part. I just don't see it as, and you're talking 25 years, long before this document of KELT even existed. These people tried to buy this land-OK. It wasn't yesterday, it wasn't last year.

**Councilor Brackett:** Didn't they try to buy it after they built on it? Am I missing this?

**Councilor Winglass:** There not the first people to have built something on somebody's land, other their own, and have to renegotiate because of that.

**Councilor Wyman:** Let me add my fifty cents worth. I'm in my 20<sup>th</sup> year in the Council and we had a situation up on Ancona Avenue. I think Scott probably remembers that. These people brought the property, but in the meantime when they built Ancona Avenue, the City did everything they were supposed to do, all the land they needed for the road. Well when the people bought the property, they found the old footing and they built the house on it. Well it was in the middle of our road. Beautiful house up there and it's still there. Lloyd Beckett, used to work for BIW, he's out in Mill Pond. He got transferred to some other state for the Ironworks, had to sell his house on Mill Pond, when he put it on the market he couldn't sell it because he had the property too close to City property. City fixed him up; helped him out. Then we went over to Kings Arms Apartments off Judkins Avenue (inaudible)... They had problems out there. City went out and we checked it all over. City helped them out. I think there's got to be some way we can help them (Sharrigans) out.

**Councilor Mitchell:** I feel like there should be some way we can help them out. Would it be possible, this might be a question for you Roger, to redesign the existing easement that they have to encompass enough square footage to be able to keep those three buildings on that lot, the original lot, and the easement? Could we take a look at that and come up with a new set of boundary lines as an easement and then put an assessed value on it for whatever the City thinks is a fair evaluation and see if possibly that might be something that the Sharrigans can take a long hard look at and see if we can come to some kind of agreement that way?

**City Solicitor Therriault:** The short answer is yes, everything is on the table at this point. Probably you don't want to sell it, sell it in some other fashion. I can't assure you, however, that that is something that is physically capable of being accomplished, I don't know. It's more of a surveyor's problem. But it is certainly something. Scott knows what the setbacks are and what's required out there. We can take a look at it and see if there is some lesser interest in the land, lesser volume of land that would serve the purpose.

**Councilor Mitchell:** Can an easement stand on its own two feet? Because I don't know a lot about easements and stuff and I'm not going to sit here and tell you I do. If you were to give me an easement and obviously you would charge me a fee or a yearly rate or be taxed on it. The City land, I'm just borrowing it from under this easement.

**City Solicitor Therriault:** The definition of an easement is the right to do something on somebody else's property. So what you acquire is that particular use that is allowed under the terms of the easement. We call it the scope of the easement – it determines what you can do and where you can do it. There may be fees involved, there may not be fees involved. The obvious example is a right-of-way. You need to get to your lot over my lot. I give you the right to drive over it and drive back. You do not acquire, under an easement, any title to the land itself. The land itself remains with the original owner. What ends up happening is that the original owner has the continuing right to use that property in any manner that doesn't interfere with the easement. So you couldn't put a gate across the right-of-way, but you can continue to use the right-of-way. The owner couldn't put a building on the right-of-way – that sort of thing.

**Councilor Mitchell:** So say that we decided we might like to reconfigure this and not make a sale to the Sharrigans, not to sell them the land, keep it under easement with covenants on it. The City could put on covenants for no more building, no further easements to be involved in the future, however we felt was safe for the City, it's not going to be construed as well they did it last time we'll do it again past practice, etc., etc. I'm just wondering if we couldn't put together another package, other than the one that's on the table right now, and take a look at it with the Sharrigans' to see if it's agreeable or not and possibly keep them where they want to be and not sell off any property, but still own the property.

**City Solicitor Therriault:** I think what you are asking is could we change what we call the scope of the easement, the purpose of the easement, to include buildings with whatever limitations that might be appropriate. The answer is yes!

**City Manager Giroux:** Scott.

**Codes Officer Davis:** I can answer your question about if they're asking for a lot more than they need, the answer is but they're not. The front and side setbacks in this zone are 25 feet, this is 25 feet (pointing to map), this is as close as the new line can be to the bunkhouse. This dimension over here is 10 feet to the septic system and that's the minimum required by state law. And the only place, maybe, that they could shave some land of what they're asking is maybe down here (inaudible) .. the front and the side setback is 25 feet, they're showing 35 feet, so they could maybe shave a little bit down here and run a 25-

foot circle over here they could maybe shave a little off of that triangle, but that's about it. They're asking for just a little bit more than the minimum they can get and leave these buildings where they are today.

**Councilor Mitchell:** But if they did that, wouldn't that keep the bathhouse and everything intact?

**Codes Officer Davis:** Yes, they can shave a little bit off of here; a little bit off of there, but the rest of this is pretty much the least they can acquire and still leave the buildings where they sit.

**Councilor Winglass:** But you'd also be giving back the land they've already ...

**Codes Officer Davis:** Right, there are looking to convey back to us there rights to this dotted line that's outside of here that was given to them in an easement for their septic system that they didn't need.

**City Solicitor Therriault:** One of the considerations we would have to go through in reconfiguring this is that you can't solve a setback issue with an easement. And that may be an important factor in this thing and that's something we would have to take a look at. I don't want you going off with the impression, yeah, we can create an easement that is going to solve all of their problems. We may or may not be able to do that, but the setback issues are going to be important and it may mean that buildings may still have to be moved. Although, they may possibly be moved to other locations.

**City Manager Giroux:** And they are probably, because you can't use an easement for those purposes, there probably have to be a transfer of property. You'd have to deed them land.

**City Solicitor Therriault:** Because the setbacks need to be measured from the property line. The easement does not create a property line.

**Councilor Winglass:** So then really the only thing, by selling them the land, you could shave it off the land Scott's talking about? And take another, whatever, 1/10<sup>th</sup> of an acre off their deal?

**Madame Chair Eosco:** Councilor Merrill did I see your hand up?

**Councilor Merrill:** Yes. I'm in favor of that direction, in moving forward, where the condition that an appropriate financial transaction take place that would take into consideration the nature of how these buildings got there and the fact that they should not have been there to begin with. So I don't think we need to do this in a way that's any more detrimental to the City or the public as possible. You know I am just so sorry to even say that, because I really don't want to see anymore of this land disappear. If we can do it with an easement, I think that would be the better way to go with still a significant financial figure attached. And if that's not possible, then I still think we still need to, perhaps, look at selling it or maybe splitting the difference if we can do it in a way that they can keep the bathroom and not the boathouse, or somehow that we should recognize that his should not have been there in the first place, but also recognizing that the City was quite lax in addressing it. Getting back to my family's story, you know I think it was dealt with in a matter of three months, so I can understand the property owners' feeling that they should be allowed to keep this building as well as the property and again Councilor Winglass' comment that while we clearly support the agreement with KELT, that there is nothing in place yet that would keep us from taking care of this situation by allowing more property to be snipped off.

**Madame Chair Eosco:** We're still in final Council comment.

**Councilor Brackett:** The question is just begging to be asked. Can we resolve this tonight? This is just becoming more, there's more angles as we go on. It's going to need more discussion outside of this session – it seems to me. We're just ..., and I'm OK with that, I guess. There's just ... I want to be fair. I want to hear what others think.

**Councilor Winglass:** I would agree with Steve. I think that this item has raised all kinds of different ....

**Councilor Brackett:** Things that I had not considered before I came into this room.

**Councilor Winglass:** Well, we were given a limited amount of information and you know some of it is due to the fact some of the information we gathered at the meeting itself - through the property owners, through the attorneys, through Scott, through Roger, Bill, etc.-our own musings. I agree, I think this, what's the rush, we're talking this is 25 years in (inaudible)...

**Madame Chair Eosco:** We have a motion on the floor.

**Councilor Brackett:** And I'd like to hear from the person that made it.

**Councilor Sinclair:** My answer to the question you asked a moment ago, "Can we resolve this tonight?" Absolutely, yes we can by communicating that we are not interested in chipping off another piece of Butler Head.

**Councilor Brackett:** That I understand.

**Councilor Sinclair:** By showing some sympathy to the situation they have gone through; giving them an opportunity to step around all of the violation fees that otherwise we have to make a plan on how to deal with those; and giving them a very reasonable period of time within which they can correct this. Now, I hear the complaint that there is nowhere else to put the building, but maybe there is, if there are private property owners that abut their property – they can approach them and find out what the real market value is of buying a piece of land big enough to move the nonconforming buildings onto and become conforming. I'm uncomfortable with their coming before this body and asking us to sell, at a discount rate, the people's land to them.

**Councilor Brackett:** I agree the price, I don't know where this price came from – the \$7,500 – is way out of line.

**Councilor Sinclair:** The last comment, I would continue to fix people's violations by conveying to them public land, then what we really do is give them incentive for folks to breach, make a violation. First of all, if this is a precedent, we won't come after you for at least 25 years and the other thing we might do is completely fix ....(laughter).

**Madame Chair Eosco:** We're in a lesson-learning period.

**Councilor Brackett:** I appreciate that. I appreciate your comments.

**Madame Chair Eosco:** So for the motion that is on the floor, any more Council comment? We can choose another path with the way this votes. I'd like to do a roll call vote on this.

**Councilor Brackett:** On the motion on the floor?

**Madame Chair Eosco:** On the motion on the floor. So, unless there is some more comment from the Council, we'll take the vote.

**Nays: 6 (Brackett, Merrill, Lockwood, Wyman, Mitchell, Winglass)**

**Yeas: 2 (Paulhus, Sinclair)**



**City Manager Giroux:** Can I make a couple of comments. Since that motion failed, I think maybe, one idea would be for the Council to have an executive session, not tonight, and then a public action on whether to look at having an appraisal of a certain piece of property and then getting into some type of negotiation. But, you know, given the intricacies of the area and what Tom has said and what we've heard tonight I don't really feel comfortable in negotiating a deal at this point, given what we've been through. Without having some kind of professional appraisal, I don't think the City ought to pay for the appraisal. And so, maybe I could sit down with Mr. Bannon and/or the Sharrigans and Roger (Therriault) and Scott (Davis) and we could look at where the lines would be drawn at a minimum necessary and we could discuss a situation that the Council would consider selling the minimum amount necessary ...and also probably having restrictions, that Councilor Mitchell had mentioned, regarding making sure there is never anymore structures, on the deed restrictions, that there's no more buildings on the property than are currently there now so we don't end up with a McMansion situation. This would in time, and maybe one or more executive sessions and public actions by the Council before we got to the point, it's not going to be solved in a couple of months. You could, theoretically, also transfer, after the initial discussion maybe with the Sharrigans, go ahead with the conservation easement in some form that accepted this area. I think KELT is willing to do that and some preliminary discussion of that. They could work with the City Solicitor so we could get the rest of it into the conservation easement and stop further erosion of land. So that would be my suggestion and I would look for guidance from the Council based on that suggestion.

**Councilor Winglass:** I think those are all good comments and good thoughts and a good starting point because there's clearly will be a lot of information raised from those various meetings. I would include the Chair as well for these discussions.

**Councilor Merrill:** I agree with that direction, but also, just throw it out there for the property owners, (inaudible)... to look at private land that is available, to look at that first as an option rather than asking for the public land.

**Madame Chair Eosco:** Alright. Well, we have some direction and we will continue that at another time.

**City Clerk White:** What was the direction again?

**Madame Chair Eosco:** Bill will be getting together with the Sharrigans' and/or the attorney again.

**Atty. Bannon:** I would merely like to thank the Council for their consideration.

#### **J. New Business 8:30 PM**

**\*7) Annual Appointment of J. Scott Davis as Codes Enforcement Officer, Health Officer and Plumbing Inspector for one year, pursuant to State Statutes.**

*This Item was passed on the Consent Agenda.*

**\*8) Annual Appointment of Tom Lister as the Alternate Codes Enforcement Officer and Plumbing Inspector for one year, pursuant to State Statutes.**

*This Item was passed on the Consent Agenda.*

**9) Appointment one member to the Bath Housing Authority Board for a term ending February 2019.**

Councilor Lockwood nominated Michael Field for this position. All were in favor of the nomination.

## **10) Annual Appointments to Committees of Council Nominees.**

Bath Housing Authority Board of Directors – Mari Eosco  
Midcoast Council of Governments - David Sinclair, Leverett Mitchell, Carolyn Lockwood  
Patten Free Library Board of Directors – Meadow Merrill  
Recreation Commission – Meadow Merrill  
Sidewalk Vending License Committee – Leverett Mitchell  
Student Community Liaison Council – Leverett Mitchell  
Welfare Review Board – David Sinclair, Andrew Winglass, Steve Brackett

Councilor Merrill made a motion to accept the slate of nominees. Councilor Mitchell seconded the motion. All were in favor.

### **J. Councilor Announcements 8:32 PM**

Madame Chair Eosco commended the Police Department on the rescue during the recent cold weather and the Public Works Department for the great job they are doing in keep the streets cleaned and safe. She reminded residents to get their dogs licensed before the end of the month to avoid the fine.

### **K. Comprehensive Plan Discussion 8:33 PM**

Councilor Brackett reported on Chapters 1 and 2 of the Comprehensive Plan.

Chapter 1 – Introduction - Tells what the plan is and should be used as a legal basis for zoning. The section also gave a brief history of dates of change to the Plan and feasibility studies that had been conducted over time such as Waterfront Planning Project, Downtown Traffic and Parking Study and the Route One Corridor Feasibility Study. The updates to the most recent plan were started by the Comprehensive Plan Committee in 2004 with a membership of 30+-. At the end, in 2009, when the current Plan was passed, there were 8 members still attending the meetings.

Chapter 2 - Vision of the City of Bath in 2025 – Councilor Brackett outlined the following Items:

- The City would have created a more diversified economy.
- The downtown would persist as the geographical, commercial, and emotional focal point of the community.
- The transportation system would provide citizens and visitors the ability to explore the riches of our maritime heritage, cultural treasures, natural resources, and all the places beyond and then return to the heart of the City.
- The educational opportunities for all ages exist because Bath's taxpayers would have supported the notion that good schools are a community's best asset, best promotion, and best insurance for the future.
- The City would promote a strong distinction between what is urban and what is rural.
- The City would be a walkable community laced together with bicycle trails and esplanades, walkways and pocket parks, river walks and running paths from the northern tip of Thorne Head to the southern reaches of the Winnegance.
- The City would be a zero-energy city accomplished through wind, solar, water, and other “clean” technologies producing enough renewable energy to power our City and others in our region.
- The improvement of the appearance and safety of Route 1 Gateway as a more attractive entrance to the City.
- The City would work on the appearance and safety of the waterfront side of the City.
- Bath would be a service center to the region.

City Planner Deci explained that a portion of the former State Planning Office has moved to the Department of Agriculture, Conservation and Forestry and planners there now oversee the municipal comprehensive plans.

The meeting adjourned at 8:45 PM with a motion by Councilor Wyman, seconded by Councilor Lockwood. 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](http://Townhallstreams.com) for up to a year.*