

**REGULAR MEETING MINUTES**  
**CITY COUNCIL OF THE CITY OF BATH, MAINE**

Wednesday, May 6, 2015 6:00 PM  
City Council Chambers, Bath City Hall

Present: Councilors Brackett, Page, Paulhus, Rogers, Wyman, Bauer, Mitchell, Omo 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.

**C. Public Hearing:**

**1) Ordinance: LUC Chapter 15: Floodplain Management (second passage) 6:01PM**

*(A complete copy of this Ordinance is on file in the Bath City Clerk's Office at 55 Front Street, Bath, Maine.)*

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

City Planner Andrew Deci explained FEMA has updated the Flood Map for our community and is ready to adopt them in July; therefore, the City needs to update its Flood Management Ordinance to comply with the FEMA updates.

He stated that it very important that this Ordinance be adopted before July so that residents inside and outside the Floodplain would be aware which ones are no longer eligible for federally subsidized flood insurance which is cheaper than flood insurance on the open market.

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

**ROLL CALL VOTE on Ordinance:**

**YEAS: Brackett, Page, Paulhus, Rogers, Wyman, Bauer, Mitchell, Omo**

**NAYS: None**

**Ordinance passed unanimously. 8-0**

Madame Chair Eosco stated this would become law in 21 days.

**D. Consent Agenda 6:04 PM**

**\*2) Minutes of the previous Council meeting of April 1, 2015. (motion to Accept as Presented)**

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

**E. Time Devoted to Residents to Address the City Council 6:05 PM**

Rabyrne Hutton of 195 High Street stated concerns regarding the condition of various City sidewalks.

The City Manager said he would look into the situation.

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

**3) Proclamation: Arbor Week, May 17<sup>th</sup>-23<sup>th</sup> (motion to pass)**

Madame Chair Eosco read the following Proclamation:

**PROCLAMATION  
ARBOR WEEK**

**WHEREAS**, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

**WHEREAS**, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

**WHEREAS**, Arbor Day is now observed throughout the nation and the world (more often as a weekly observance), and

**WHEREAS**, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

**WHEREAS**, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

**WHEREAS**, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

**WHEREAS**, trees, wherever they are planted, are a source of joy and spiritual renewal,

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BATH, MAINE, HEREBY PROCLAIMS THE WEEK OF MAY 17<sup>th</sup>-23<sup>th</sup> AS**

**ARBOR WEEK**

in the City of Bath, and we urge all citizens to celebrate Arbor Week and to support efforts to protect our trees and woodlands, and

**FURTHER**, We urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

DATED this 6<sup>th</sup> day of May 2015.

Councilor Wyman made a motion to accept this Proclamation. Councilor Paulhus seconded the motion.

**VOTE on Proclamation:**

**YEAS: 8**

**NAYS: 0**

**Proclamation passed unanimously. 8-0**

**4) Proclamation: National Preservation Month Proclamation (motion to pass)**

Madame Chair Eosco read the following Proclamation:

**PROCLAMATION  
NATIONAL PRESERVATION MONTH**

**WHEREAS**, historic preservation is an effective tool for managing growth and sustainable development, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

**WHEREAS**, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

**WHEREAS**, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and

**WHEREAS**, the City of Bath with the National Trust for Historic Preservation co-sponsor National Preservation Month 2015;

**NOW, THEREFORE**, we, the Bath City Council, do proclaim May 2015 as National Preservation Month, and call upon the people of Bath to join their fellow citizens across the United States in recognizing and participating in this special observance.

Dated this 6<sup>th</sup> day of May 2015.

Councilor Omo made a motion to accept the proclamation. Councilor Rogers seconded the motion.

**VOTE on Proclamation:**

**YEAS: 8**

**NAYS: 0**

**Proclamation passed unanimously. 8-0**

**5) Ordinance – LUC Amendment, Article 17 - Wireless Communications Facilities (First Passage)**

Councilor Omo made a motion to waive the reading of the following Ordinance. Councilor Mitchell seconded the motion.

**VOTE on Waiving Motion:**

**YEAS: 6**

**NAYS: 2 (Rogers, Wyman)**

**Motion passed. 6-2**

## ORDINANCE

*BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BATH THAT THE LAND USE CODE OF THE CITY OF BATH ADOPTED JULY 19, 2000, AND SUBSEQUENTLY AMENDED, BE HEREBY FURTHER AMENDED AS FOLLOWS:*

### ARTICLE 17 – WIRELESS COMMUNICATIONS FACILITIES

#### SECTION 17.02 DEFINITIONS

Amend the following:

Fall Zone – The area on the ground from the base of a WCF support structure that forms a circle within a radius equal to 125% of its height, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

#### SECTION 17.06 PERFORMANCE STANDARDS FOR WCFs

Delete:

C. A new or expanded WCF may not be closer to any property line than a distance equal to 150 percent of the height of its tallest support structure plus any antennas. This standard does not apply to WCFs placed within any non-tower structure.

Replace with the following:

C. The fall zone area, as defined in Section 17.02, shall be located on the property of the developer, or if on leased property, the property of the lessor. The Planning Board may allow a portion of the 125% radius around the WCF support structure to extend upon the property of an abutting property owner(s), upon showing that the abutting property owner(s) has agreed to allow a portion of the fall zone to be extended onto their property. The allowed activity within the fall zone may be addressed under either of the following options. Option 1: If there are to be no restrictions on the placement or erection of structures within the fall zone area, then the lessor of the property where the WCF support structure is located and/or the abutting property owner if encroachment of the fall zone distance is approved by the Planning Board on that abutting property owner(s) property, then the lessor or abutter will provide a recordable document(s) that identifies by suitable metes and bounds description or survey depiction the area of the lessor or abutter(s) property within the fall zone area outside of the area controlled by the developer, acknowledging the potential hazard for falling debris. Option 2: Where the owners of property within the area defined as a fall zone are agreeable to prohibiting the placement of structures within that area, then the owners of all property so affected shall provide a recordable easement which defines the area affected by suitable metes and bounds description or survey depiction of the area and which restricts the placement of structures within that area for the duration of time that the support structure is in place.

The distance requirement for the fall zone shall be provided on the developer's property or property of the lessor if the developer is leasing property to locate the structure. The Planning Board, however, may decrease the amount of the fall zone on the developer or lessor's property by allowing a portion of the fall zone to extend into the abutting property(s). In such instance, however, the support structure may not be sited closer to the abutting property line than the minimum front, side and/or rear setback requirement of the zone and district in which the fall zone is located and the combined distance from the boundary and the portion of setback on the abutting property(s) shall be equivalent to the fall zone radius.

The 125% setback shall not apply to Existing Wireless Communication Facilities installed within Nonresidential Structures.

Andrew Deci explained that the Planning Board had worked on the Fall Zone and what can happen in that Zone and the Planning Board has unanimously approved this Ordinance.

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

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**ROLL CALL VOTE on Ordinance:**

**YEAS: Brackett, Page, Paulhus, Wyman, Bauer, Mitchell, Omo**

**NAYS: Rogers**

**Ordinance passed 7-1**

Madame Chairman set second passage of this Ordinance for June 3<sup>rd</sup> at 6:01PM.

#### **6) Order: Appointing City Arborist/Tree Warden (annual appointment)**

Madame Chair Eosco read the following Order:

### **ORDER**

#### **APPOINTING CITY ARBORIST/TREE WARDEN**

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

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

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

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

WHEREAS, Kyle Rosenberg has worked as an Arborist and has shown his abilities in the care and concern for trees and,

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

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

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

Mr. Rosenberg introduced himself and gave a summary of his experience.

**VOTE on Order:**

**YEAS: 8**

**NAYS: 0**

**Order passed unanimously. 8-0**

**7) Order: Approving Ambulance Contract with the Town of Woolwich**

Madame Chair Eosco read the following Order:

**ORDER  
APPROVING AMBULANCE CONTRACT**

**WHEREAS**, on an ad hoc basis the City of Bath has been providing ambulance service to residents of the Town of Woolwich; and

**WHEREAS**, there is no Agreement between the City of Bath and the Town of Woolwich as to the terms and conditions under which these services are provided.

**NOW, THEREFORE, BE IT ORDERED** by the City Council of the City of Bath that the Agreement by and between the City of Bath and the Town of Woolwich to provide certain ambulance service on an as needed basis to the Town of Woolwich, in substantially the form attached hereto, be and hereby is approved for a one (1) year term commencing on the date of approval of this Order and running for a one (1) year period until regular Council meeting in May of 2016, and that the City Manager be authorized on behalf of the City to sign the Agreement, together with such other documentation as may be necessary, required or convenient to the Agreement and its implementation, and is further authorized to execute any year to year Agreement extensions.

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

Captain Hudson of the Bath Fire Department explained the particulars of the agreement.

**VOTE on Order:**

**YEAS: 8**

**NAYS: 0**

**Order passed unanimously. 8-0**

**8) Order: Approving Bid for 210 Middle Street Property**

Madame Chair Eosco read the following Order.

**ORDER  
APPROVING BID  
210 MIDDLE STREET**

**WHEREAS**, the City of Bath is the owner of property at 210 Middle Street; and

**WHEREAS**, the City Council has authorized the sale of that property and has advertised for sealed bids; and

**WHEREAS**, the bids have been received and opened and the bidding period has expired; and

**WHEREAS**, the high bid submitted for the purchase of the property is from Seth Hall on behalf of S & J LLAMA in the sum of Thirty-Six Thousand Dollars (\$36,000.00).

**NOW, THEREFORE, BE IT ORDERED** by the City Council of the City of Bath that the bid of Seth Hall on behalf of S & J LLAMA be and hereby is accepted and that the property be conveyed to the successful bidder by Municipal Quit-Claim Deed, subject to the terms and conditions in the solicitation for bids, and that the City Manager be authorized on behalf of the City of Bath to execute the Municipal Quit-Claim Deed, together with such other documents as may be necessary, appropriate or convenient to the transaction.

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

Community Development Director Scott LaFlamme explained the history of this matter and how the bidding process worked.

City Manager Giroux stated that there should be no reason to hold the Executive Session that was scheduled at the end of the meeting as all points were very clear on this matter.

Mr. Hall of S & J LLAMA stated they were a buy to own company and would be fixing up the property and renting it out and were very pleased to become a part of the City of Bath.

**VOTE on Order:**

**YEAS: 8**

**NAYS: 0**

**Order passed unanimously. 8-0**

**9) Resolution: Accepting CDBG Funds for Willow Street Project**

Madame Chair Eosco read the following Resolution:

**BATH CITY COUNCIL RESOLUTION  
STATE OF MAINE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

**WHEREAS**, the **City of Bath** wishes to apply to the Department of Economic and Community Development for a Community Development Block Grant to carry out a community development program; and

**WHEREAS**, the planning process required by Maine Law and the CDBG Program have been complied with, including participation in the planning process by low and moderate income families and individuals and the community has conducted at least one duly advertised public hearing.

**NOW THEREFORE**, be it resolved by the Council of the City of Bath that the City Manager:

- 1) Is authorized and directed to submit an application for the Public Infrastructure Grant program in the amount of \$60,000 to the State of Maine's CDBG Program, to the Department of Economic and Community Development on behalf of the City of Bath, substantially in the form presented to this council;
- 2) Is authorized to make assurances on behalf of the City of Bath required as part of such applications, and
- 3) Is authorized and directed, upon acceptance of said funds to carry out the duties and responsibilities for implementing and said program(s), consistent with the Charter of the City of Bath and the laws and regulations governing planning and implementation of community development programs in the State of Maine.

DATE ENACTED: May 6, 2015

Councilor Mitchell made a motion to put this Resolution on the floor for discussion. Councilor Brackett seconded the motion.

Community Development Director Scott LaFlamme spoke regarding the application process.

Public Works Director Peter Owen spoke regarding the technical aspects of the project.

**VOTE on Resolution:**

**YEAS: 8**

**NAYS: 0**

**Resolution passed unanimously. 8-0**

**D. Petitions & Communications 6:35 PM**

Madame Chair Eosco read the following letter from American Legion Smith Tobey #21.



The American Legion  
Smith-Tobey Post 21  
200 Congress Ave  
Bath, Maine 04530

7 May 2015

Chairperson Eosco and the Bath City Council,

It is with regret that I must inform you that The American Legion Smith-Tobey Post 21 will be unable to sponsor the Memorial Day Parade in 2015. The Post is experiencing severe financial difficulties and is currently in the process of an operational reorganization. We apologize if this withdrawal has caused any problems for the City.

The Post Executive Committee is working very hard on this reorganization and once Post 21 has recovered and is back on track, we look forward to continuing our relationship with the City. I will remain in contact with the Council on our recovery efforts and hopefully we will be able to resume Parade sponsorship in 2016.

For God and Country

Very Respectfully,

Michael Frelk

Post Adjutant



## **E. City Manager's Report 6:37 PM**

The City Manager spoke regarding the following topics:

- Locked in fuel prices for two years
- Spring leaf curbside pick up schedule
- Spring cleanup schedule
- North Street Project Update
- Street sweeping and striping Update

## **F. Committee Reports 6:40 PM**

There were no reports.

## **G. Unfinished Business 6:40 PM**

### **10) Discussion of South End Park**

Andrew Deci, City Planner, explained that BIW donated \$100,000 toward improvements of the South End Park as part of a zoning action in 2013. He said that tonight is the end of a two-phase process which allowed citizens input for the future use of the Park, with the goal of the Council tonight to decide which of the three design improvements best suits the site. He pointed out that a wide range of improvements were suggested, but most of the individuals attending the public meeting in October supported the current use of the Park as a dog park. There was limited support for non-dog specific improvements. He stated that in April 2015 three proposals were presented to the public at an open house in City Hall with public comment allowed but there was no clear support of one outcome during that open house.

Andrew Deci explained that during that process, Bruce Kaake, a proponent of the dog usage for the Park, had come up with an alternate proposal which he will share tonight. He said that what design to use needs to be resolved so the City can begin the process to implement improvements. He then presented the three options to the Council. (These options are available through the City Planner's office.) None of the options had an overwhelming support from the public.

Councilor Paulhus asked if the money for the engineers to design the selected option would come out of the \$100,000. City Planner Deci said it would and added that if any money remains, it would be kept for future maintenance and/or more improvements. He explained that the City will have to work with DEP to obtain permits for the improvements so as to avoid any damage to the capped property. DEP will have to be presented with an engineer's plan for the improvements.

Cynthia Zelinka, 714 Middle St. addressed the Council saying the off-leash ordinance allows for calmer dogs than when they are on leashes. Madame Chair Eosco said there was no intention of taking the off-leash law away.

Kent Eliassen, 358 Washington St. addressed the Council saying he has lived across from the Park for 30 years and has never seen problems with the dogs. He suggested that if the intent of the fence was to keep dogs from getting hit, then the fence should go all the way around the property.

Sandra Johnson, 353 High St. addressed the Council saying she doesn't see any sense in putting a fence up. She doesn't want the Park to become a dog only park because many other people use the park to walk and enjoy.

Paul Johnson, 410 Washington St. addressed the Council saying a gate, or more than one gate, would allow people to walk away from the dogs or for people with leashed dogs. He does not want it to be called a "dog park" because it is not just a dog park.

Bruce Kaake of 12 West St. addressed the Council and proposed a design designated as Option X, which specifically addresses Washington St. He took proposal A and modified it by moving the fence closer to the Washington St. sidewalk and expanding the fenced area closer to the parking lot as well as closing in the fence around the marshy area where dogs tend to go swimming. Mr. Kaake got 125 signatures from people who liked Option X over the other three options.

Jeffrey Clark of 366 Middle St., Jeff Pope of 11 Oliver St., Brook Carleton of Baker Road in Freeport, Steve Foster of 16 Tower Circle, Adair Delamater of 44 E. Milan St. and Jean Anthony of 1325 Washington St. all expressed support for Option X.

Councilor Omo voiced in favor of option “X” saying he was in favor of access to the water for the dogs. He said he didn’t know if he wanted to encourage “bathers” in that area because there is some “stuff” in that water. City Manager Giroux added that there is also quite a current. Councilor Omo was in agreement with the rip-rap and said he sympathized with some of the owners who didn’t want their dogs going in the mud. He questioned why there couldn’t just be a gate to the northwest corner if there is access going out to the sidewalk. He asked if that wasn’t where the sidewalk, the park entrance and the BIW road all come together. City Planner Deci said the reason staff hadn’t proposed a gate along that sidewalk is that they didn’t want people to have to open and close a gate to get in there. Councilor Omo said he was still working on the configuration of having the City sidewalk outside of the park area and then making a new stone dust trail inside the fence.

Madame Chair Eosco asked if they could talk about where the gates were on this plan. City Planner Deci responded that Bruce Kaake has proposed a loop trail that intersects with the sidewalk, a single gate at the first connection with the parking lot and then a double gate where it goes into the new expanded parking area. Council discussion ensued regarding the gates.

Madame Chair Eosco then asked if the Council was ready to take a vote on the gates and Configuration X. It was suggested that they address the fence only so they could move to the gate issues, the rip-rap and things like that.

Madame Chair Eosco said that she was going to ask for a show of hands from Council to indicate who was in favor of Configuration X. There was a unanimous show of hands from the Council to work with Configuration X. She then asked who on the Council was in favor of creating the inside pathway – the loop on the west side of the fence. There was a consensus to implement that (No. 2) as well. It was clarified that the Council wants the path contiguous inside. Madame Chair Eosco suggested that they move on to gates. Councilor Rogers asked if they could, before they got to gates, discuss the lighting. The Council acknowledged that it was a dawn to dusk park but felt that solar lighting should be looked into for safety, as a crime deterrent and to facilitate winter usage of the park. The majority of the Council felt that this issue should be looked into and researched.

Rip-rap was the next issue that the Council discussed. There was support for rip-rap for the dogs and it was also requested that something be done to make the goat path less treacherous. There was a consensus of support on this issue as well. City Planner Deci said that what he has heard is a thumbs up on the parking lot, the fence in this configuration, creating some sort of path to make sure that there is a loop on the inside of the fenced in area generally parallel to Washington St. , and if there’s money to investigate lighting, and improvement to the “goat path”. City Manager Giroux added a slight modification to the fence as part of the goat path as well.

Councilor Omo said that he is assuming that the watering station and all the other amenities suggested were all included as well, which was confirmed. Councilor Page suggested that the last thing they needed to go over was the gates. Madame Chair Eosco asked if they wanted to talk about that and City Manager Giroux suggested that they leave that to Staff. Councilor Rogers suggested that there should be rules

posted at every entrance to the park. City Manager Giroux said that they try not to overdo signage but said that they can look at this.

## **H. New Business 8:04 PM**

Councilor Omo explained the status of the redistricting process for RSU #1.

### **11) Appointment 2 members to the Bicycle and Pedestrian Committee each with a term to expire in May 2018.**

On behalf of the Appointments Committee, Councilor Mitchell nominated John Swenson and Travis Wolfel for these positions. All were in favor of the nominations.

### **12) Discussion Tax Payments per Year**

Community Development Director Scott LaFlamme gave the history of what brought forth this discussion and what the staff had found with researching the situation barriers such as borrowing status, cash flow issue, school and county assessment payments.

The Finance Director gave the financial specifics regarding the twice a year payment.

City Solicitor Roger Therriault explained the bank was driving the full tax amount to be paid at the time of closing and a two tax payment would definitely benefit the home buyer.

Terri Driscoll of 43 York Street explained she had brought this idea forward to help diminish the perception that Bath has high taxes by splitting the payment in half.

Council consensus was to have staff work on a plan and to bring this forward to a workshop.

## **I. Councilor Announcements 8:44 PM**

Councilor Rogers informed Council that he had taken a job in Bristol, England and would be leaving at the end of June. He thanked everyone for their support in electing him to office. Madame Chair thanked Councilor Rogers for his service to the City of Bath.

The meeting adjourned to a Workshop regarding the Huse School Project by Szanton at 8:46 PM with a motion by Councilor Rogers, seconded by Councilor Bauer. 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 portion of the meeting is available for review in the City Clerk's office during regular business hours by appointment.*