

Minutes
Bar Harbor Town Council
February 6, 2018

I. EXECUTIVE SESSION – 5:30 P.M. – In attendance were Councilors: Paul Paradis, Gary Friedmann, Stephen Coston, Peter St. Germain, Erin Cough, Judie Noonan, Matthew Hochman; and Town Manager Cornell Knight, Attorneys: Ed Bearor and Josh Randlett.

A. Legal Consultation – *(To be held in executive session as permitted by 1 MRSA §405.6.E. for Consultation with legal counsel on the Town Council's rights and responsibilities on pending litigation.) (Blanchard v. Town)*

Mr. St. Germain, with second by Mr. Hochman, moved to go into executive session at 5:31 p.m. as permitted by 1 MRSA §405.6.E. for consultation with legal counsel on the Town Council's rights and responsibilities on pending litigation in the Blanchard v. Town of Bar Harbor. Motion passed 7-0. Council came out of executive session at 6:58 p.m.

II. Regular Meeting resumed at 7:02 p.m., all members were present.

Following executive session, the following action was taken. Mr. Friedmann, with second by Mr. St. Germain, moved that:

1. A clear majority of the Town wants to own the old ferry terminal.
2. A clear majority voted to approve Article 12 and defeat Article 13 in June 2017 which allowed the Town to purchase the property and develop it for multiple uses; and not to limit cruise ship use of the property.
3. All decisions regarding the future of the ferry terminal and cruise ships will be determined by Town Meeting.
4. This lawsuit seeks to overturn the decision of Town Meeting, and to disenfranchise the votes of the citizens of Bar Harbor.
5. The settlement offer from this handful of self-appointed individuals who believe they know better than the citizens of Bar Harbor, as expressed by Town Meeting votes, amounts to an attempt to blackmail the Council into removing these decisions about the Town's future from the citizens of Bar Harbor through Town Meeting.
6. Therefore we reject the settlement offer and direct our legal counsel to request summary judgement. Motion passed 7-0.

Further, Mr. Hochman, with second by Mr. St. Germain, moved that based on a review of documents we recently received in the course of the litigation filed by Mr. Blanchard and others against the Town, the Council has grave concerns that certain citizens serving on the Warrant Committee have actively worked behind the scenes to influence the position taken by this Committee, and we will be looking into this matter further. Therefore, move that the Town Manager take steps to gather additional documents that likely exist in connection with this matter. Motion passed 7-0.

Chair Paradis made opening remarks and gave attendees the opportunity to greet each other and gave notice to the posted Meeting Ground Rules.

A. Excused Absence(s) – All were present.

III. PUBLIC COMMENT PERIOD - *The Town Council allows at this time up to fifteen minutes of public comment on any subject not on the agenda and not in litigation with a maximum of three minutes per person.*

Val Peacock served on the Ferry Terminal Property Advisory Committee because of her interest to see the purchase of the property and to preserve waterfront for the Town use and to see waterfront recreation available to the residents. She is very much engaged with what the citizens want, and to support the Town Council in this effort. She stated the benefits to laying out the strategy, the plan, and the process. She for one would like to understand the timeline of three items that are separate and yet intertwined: 1. The purchase, 2. Then what happens, and 3. The Port Authority. Will there be public input on the B&A plan, if so when, and will there be an opportunity for changes?

Town Manager Cornell Knight responded in June 2018 the voters will vote for a bond to make the purchase. If that passes, then how it will be developed and cost. The B & A plan should be out shortly before the June 2018 vote, but not in time to give consideration of the business plan. There will be public input of the plan and the financial cost. Once a decision is made of the plan, a vote would take place in probably June 2019. If the cost is greater than the Town residents feel they want to be obligated to, the Port Authority is an option. The Port Authority cannot happen without the vote of the people.

Joe Minutolo expressed frustration as to why the Port Authority is in legislation now, before the discussion of the plan, and before discussing the pros and cons of a Port Authority. This legislation comes before a plan is in place.

Darron Collins, President of the College of the Atlantic and resident, shared the contributions of the institution and how the COA is a fabric of the community. The development of the property for a cruise ship berthing pier would be detrimental to COA's 30 plus acre campus. An institution awarded and recognized for their environmental studies and accomplishments.

IV. APPROVAL OF MINUTES:

- A. January 16, 2018 – Regular Meeting**
- B. January 18, 2018 – Special Meeting**
- C. January 23, 2018 – Special Meeting**
- D. January 25, 2018 – Special Meeting**

Mr. St. Germain, with second by Mr. Hochman, moved to approve the minutes of January 16, 2018 regular meeting and January 18, 23, 25, 2018 special meeting as published. Motion passed 7-0.

V. ADOPTION OF AGENDA – Mr. Friedmann, with second by Mr. St. Germain, moved to adopt the agenda as published. Motion passed 7-0.

VI. CONSENT AGENDA - *A single vote has been scheduled to approve the following routine items of business without discussion, unless individual agenda item action is requested by a Councilor:*

A. Grants:

1. **Maine Bureau of Highway Safety** – *Possible motion to approve Police Chief's request for authorization to apply for two 2018 Maine Bureau of Highway enforcement grants: Distracted Driving for maximum amount of \$9,819.38 and \$4,018.36 for Impaired Driving*
2. **Justice Assistance Grant**– *Possible motion to approve Police Chief's request to participate in the 2016 Byrne JAG grant program and accept and expend funds awarded in the amount of \$536.*

Mr. St. Germain, with second by Mr. Hochman, moved to approve the consent agenda as published. Motion passed 7-0.

VII. PUBLIC HEARINGS:

A. Special Amusement Permit Renewal: Bar Harbor Inn, 8 Newport Drive, *request for Class 3ad, three or more musicians with mechanical amplification and dancing as submitted by Donna Mitchell.* – There were no comments from the public. Mr. St. Germain, with second by Mr. Hochman, moved to approve the Special Amusement Permit application to the Bar Harbor Inn for a Class 3ad with mechanical amplification and dancing, as presented. Motion passed 7-0.

A. Marijuana Moratorium – *Public comments and possible adoption (or amendment) of proposed 180 day marijuana moratorium.* – Six individuals spoke of support, and the pros and cons of retail/commercial sales. Those in support of recreational use and retail and commercial sales would like to see the Town move forward in creating the regulations necessary to be ready to go when the State has finalize legislation. They understand the need at this time for the moratorium, but do not want to see it continually renewed. Also, suggestions were made when creating regulations for the areas of allowed use and the application fee. Consider, not only the cost to administer the application, but the impact of additional services of having this new type of business. Two expressed non-support of sales in Bar Harbor. It's doesn't fit the character of the Town and its visitors, nor the character of Acadia National Park and conflicts with federal regulations The second opposition of sales was concern for health risks and behavior with more exposure for the opportunity for substance abuse, especially adolescence, and the impact to the Town and individuals.

A brief discussion of the effective date with regards to the now enacted emergency ordinance. Per Town Code, 30 days from adoption, March 8th. Following Council comments, Mr. Hochman, with second by Ms. Noonan, moved to adopt the Moratorium Ordinance on Retail Marijuana Establishments and Retail Marijuana Stores and Retail Marijuana Social Clubs as presented. Motion passed 7-0.

**MUNICIPALITY OF THE TOWN OF BAR HARBOR MORATORIUM
ORDINANCE ON RETAIL MARIJUANA ESTABLISHMENTS AND RETAIL
MARIJUANA STORES AND RETAIL MARIJUANA SOCIAL CLUBS**

WHEREAS, the "Marijuana Legalization Act," has become law in Maine, codified in the Maine Revised Statutes in Title 7, chapter 417; and

WHEREAS, the Marijuana Legalization Act (hereinafter, "Act") authorizes a municipality to regulate the number of retail marijuana stores and the location and operation of retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, as those terms are defined in the Act, as well as providing the option to prohibit the operation of retail marijuana social clubs and retail marijuana establishments, including stores, cultivation facilities, manufacturing facilities and testing facilities, within its jurisdiction; and

WHEREAS, the Act will not limit the privileges or rights afforded by the Maine Medical Use of Marijuana Act (22 M.R.S.A. § § 2421 - 2430B) to qualifying patients, primary caregivers, or registered dispensaries, including cultivation facilities associated with any of those classifications; and

WHEREAS, Bar Harbor's current ordinances do not include any regulations related to retail marijuana stores, retail marijuana establishments or retail marijuana social clubs under the proposed new Act; and

WHEREAS, the unregulated location and operation of retail marijuana

establishments, retail marijuana stores retail marijuana social clubs within the Municipality of the Town of Bar Harbor raises legitimate and substantial questions about the impact of such establishments, stores and social clubs on the Municipality, including questions about the compatibility of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs with existing uses and development in the Town of Bar Harbor; the potential adverse health and safety effects of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the Act; potential criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the Municipality's police and fire departments; and the adequacy of the Municipality's streets and infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments, retail marijuana stores or retail marijuana social clubs; and

WHEREAS, the possible effect of the location and operation of retail marijuana establishments and/or retail marijuana stores and/or retail marijuana social clubs within the Municipality has potentially serious implications for the health, safety and welfare of the Municipality and its residents; and

WHEREAS, the Municipality needs time to review the Act and to review its own ordinances to determine the implications of future proposed retail marijuana establishments and/or retail marijuana stores and/or retail marijuana social clubs to develop reasonable ordinances governing the location and operations of such establishments and stores and social clubs to address the concerns cited above; and

WHEREAS, the Municipality's current ordinances are insufficient to prevent serious public harm that could be caused by the unregulated development of retail marijuana establishments and retail

marijuana stores and retail marijuana social clubs and other uses authorized by the Act, thereby necessitating a moratorium; and

WHEREAS, the Town Council and the administration and the planning board, with the professional advice and assistance of the police department, shall study Bar Harbor's current ordinances to determine the land use and other regulatory implications of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs and consider what locations, if any, and conditions of approval, if any, might be appropriate for such uses; and

WHEREAS, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs and other uses authorized by the Act, being located in Bar Harbor; and

WHEREAS, it is anticipated that such a study, review, and development of recommended changes to existing ordinances or adoption of new ordinances will take at least one hundred and eighty (180) days from the date this Moratorium Ordinance on retail marijuana establishments and retail marijuana stores and retail marijuana social Clubs is enacted;

NOW, THEREFORE, be it ordained by the Bar Harbor Town Council, that the following Moratorium Ordinance on retail marijuana establishments and retail marijuana stores and retail marijuana social clubs be, and hereby is, enacted, and, in furtherance thereof, the Town Council does hereby declare a moratorium on location, operation or licensing of any retail marijuana social clubs and any retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, within the Town.

This Moratorium Ordinance shall take effect, once enacted by the Town Council, but shall be applicable as expressly provided below. The moratorium shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Ordinance, unless extended, repealed, or modified by the Town Council, for the express purpose of drafting an amendment or amendments to the Town's current ordinances or drafting new ordinances to protect the public from health and safety risks including, but not limited to, compatibility of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs with existing and permitted uses; the correlation of retail marijuana establishments, retail marijuana stores and retail marijuana social clubs with medical marijuana cultivation facilities and dispensaries, all as defined in the Act; the potential adverse health and safety effects of retail marijuana establishments and retail marijuana stores and retail marijuana social clubs on the community if not properly regulated; the possibility of illicit sale and use of marijuana and marijuana products to minors and misuse of marijuana and marijuana products by those who would abuse the uses authorized under the new law; criminal activity associated with the cultivation, manufacturing, sale and use of marijuana and marijuana products for non-medicinal purposes and the potential increased burden on the public safety agencies serving the Town of Bar Harbor in responding to the same; and the adequacy of the Town's infrastructure to accommodate the additional traffic and/or population that may result from the presence of retail marijuana establishments or retail marijuana stores or retail marijuana social clubs in Bar Harbor.

BE IT FURTHER ORDAINED, that this Ordinance shall apply to retail marijuana stores and retail marijuana social clubs and retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities retail marijuana testing facilities, as those terms are defined by the Act, codified at 7 M.R.S.A. §§ 2442 (36), (38), (39), (40) (41), that may be proposed to be located within Bar Harbor on or after the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that notwithstanding the provisions of

1 M.R.S.A. § 302 or any other law to contrary, this Ordinance, when enacted, shall govern any proposed retail marijuana establishments or retail marijuana stores or retail marijuana social clubs for which an application for a building permit, Certificate of Occupancy, site plan or any other required approval has not been submitted to and granted final approval by the Code Enforcement Officer, Planning Board or other Municipal official or board prior to the applicability date of this Ordinance; and

BE IT FURTHER ORDAINED, that no person or organization develop or operate a retail marijuana establishment or retail marijuana store or retail marijuana social club within the Town of Bar Harbor on or after the effective date of this Ordinance without complying with whatever ordinance amendment or amendments the legislative body may enact as a result of this Moratorium Ordinance; and

BE IT FURTHER ORDAINED, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Municipality shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit or any other type of land use approval or permit and/or any other permits or licenses related to a marijuana establishment or retail marijuana stores or retail marijuana social club; and

BE IT FURTHER ORDAINED, that those provisions of the Town's ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

BE IT FURTHER ORDAINED, that if retail marijuana establishments or retail marijuana stores or retail marijuana social clubs are established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the Town shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

BE IT FURTHER ORDAINED, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

VIII. REGULAR BUSINESS:

A. **Communication Technology Task Force** – *Request from the task force for Town Council's direction on the following:*

1. *Acceptance Use Policy extending to members of boards and committees*

As part of Council Goals, Mr. Hochman inquired if Council wished for the Communication Technology Task Force to work on a separate acceptable technology use policy for boards and committees. He suggested a separate policy from the current Technology Use Policy for employees, since there are differences in use and what is applicable. In addition, a revised draft of the current policy is provided with updates on all technology advances and incorporating social media. Following discussion, Mr. St. Germain, with second by Ms. Noonan, moved to direct CTTF to draft an Acceptable Use Policy for board and committee members. Motion passed 7-0.

2. *Broadcasting more meetings*

Following discussion at the CTF meeting, Mr. Hochman inquired if Council would offer guidance to the request to broadcast more meetings. Mr. Hochman has been approached to having more meetings broadcast, especially daytime meetings. It's understood the difficulty in finding qualified personnel and the financial expense. Following discussion, Ms. Noonan, with second by Mr. St. Germain, moved to direct CTF to move forward with finding options and costs associated with broadcasting more meetings, and return to Council for consideration. Motion passed 7-0.

B. Treasurer's Warrant - Request of Treasurer to authorize paid bills. – Mr. Friedmann, with second by Mr. St. Germain, moved to sign the Treasurer's warrants for paid bills. Motion passed 7-0.

IX. TOWN MANAGER'S COMMENTS – Town Manager Cornell Knight reported that at last Council budget meeting the school bond was \$5.12 million, and after yesterday's school board meeting, it is \$6.4 million.

X. COUNCIL COMMENTS AND REQUESTS FOR FUTURE AGENDAS

Ms. Noonan was pleased to announce her surgery went well and should finish treatment in April.

Mr. Hochman announced Open Table MDI suppers, a community supper starting tonight at the Congregational Church. It's a free meal with the opportunity for the community to come together. They held a benefit party last Saturday with a silent auction and live music and dance. They hope to start doing them weekly once it catches on. Next supper March 13.

Ms. Cough thanked the highway department and police department for taking care of Eagle Lake Road, a state road, where a section of road was a hazard.

Mr. Friedmann welcomed Judie Noonan back. They all missed her, and with a smile he said, "There were two votes 3 to 3 and they could have used her."

He thanked people for coming out. He feels Council is very attentive in listening to the citizens and encourage citizen participation. The Ferry Terminal Property Advisory Committee was formed and great citizen participation. Council listened and acted upon their recommendations. Until the B&A report is out, we don't know details of the business plan. It could be wonderful or it could be daunting financially and a liability. Citizens are encouraged to continue their participation through this process. Currently, there is just under \$10 million proposed in bonds for this next budget. It's unknown what future funding will be necessary for the ferry terminal development, along with the existing debt service. Council just wants to give the public all the options available for consideration, and the Port Authority is one.

Mr. Friedmann went on to explain the motions that came out of executive session regarding the lawsuit, Blanchard v. Town. The Town is being sued by residents and non-residents that contend the votes taken last June were flawed and unlawful. He feels their offer is a blatant attempt to hijack Town meeting. There is a sense in the Town, and Mr. Friedmann stated he did not know where it comes from, that Council is going to pull

a fast one, or has an agenda, or slip in a cruise ship terminal without anyone looking. These things cannot happen, Bar Harbor is a Town Meeting form of government. Town Council does not decide on budgets, land use ordinances, or a port authority, it's the vote of the people. He finds it offensive that they are trying to overturn Town meeting. People have the power through Town Meeting vote.

Once the Town owns the property, then it can be decided what to do with it. Port Authority is only an option to give the citizens financial relief, if necessary. This will be done at a Town Meeting vote, the people will decide. He further pleaded to give Council credit, they are trying to do the best for the Town, please work with Council. He feels Council actively listens to the public and is responsive to them. Council seeks public comment on issues, they want feedback. POLCO is a resource the Town uses to gather comments, it can be used for public comments for specifics in the B&A plan. Once again, Council is trying to get as much public comments and participation as possible.

Mr. Friedmann further explained, in relation to Matt Hochman's motion earlier, during a lawsuit parties can obtain documents. It came to light some of the elected committee members on the Warrant Committee, were conducting business behind the scene. Council obtained access to some of their emails and were gravely concerned to learn of the behind the scene activity which was not transparent. This Council holds itself to a very high standards, and the lack of transparency of these Warrant Committee members is why there was so much gravity in the motions that came out of executive session.

Mr. Friedmann appreciated the people for listening and encouraged them to come to him, Council, a Councilor, or the Town Manager, who has an open door policy, with concerns.

Mr. Paradis stated Mr. Friedmann touched upon everything on his list, except the financial portion that will be coming with the plan to develop the ferry terminal property.

XI. ADJOURNMENT – Mr. St. Germain, with second by Mr. Hochman, moved to adjourn at 8:08 p.m. Motion passed 7-0.

Patricia A. Gray, Town Clerk