

MINUTES
Bar Harbor Town Council
January 17, 2023

- I. CALL TO ORDER** – 6:30 P.M. In attendance were Councilors Valerie Peacock, Matthew Hochman (remote), Joe Minutolo, Jill Goldthwait, Erin Cough, and Gary Friedmann; Town Manager Kevin Sutherland and Town Clerk Liz Graves.

Ms. Peacock made opening remarks. The weather has varied wildly, with sun, snow, wind, rain, and sleet—it was possible to ice skate at Glen Mary for a short window. Her eight-year-old son competed in his first basketball game at the YMCA.

She acknowledged the comments the Council has been receiving regarding the cruise ship disembarkations amendment to the Land Use Ordinance and the lawsuit from APPL. She said this is a challenging time for the Council, staff, and the whole community. Staff is working to develop regulations to implement the cruise ship disembarkation changes to the LUO. She said the Council hears the input and continues to listen to it all. Two weeks ago in executive session, the Council discussed legal strategy for the lawsuit, and how to best achieve the community’s goals and needs, with the town’s attorneys. Following the executive session at this meeting, she said the Council hopes to come back and provide the community with information about the intended path forward. Because it is active litigation, not everything discussed with legal counsel can be shared publicly, but the Council intends to provide as much information as possible throughout the process.

- A. Excused Absence(s)**—Mr. Hochman with second by Ms. Cough, moved to excuse Councilor Jeff Dobbs as provided by Town Charter section C-12.B(1)(d). Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

Motion passed 6-0.

II. READING OF THE MEETING GROUND RULES

- 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.*—None.

IV. APPROVAL OF MINUTES

- A. January 3, 2023 Regular Meeting**— Mr. Hochman with second by Ms. Cough, moved to approve the January 3, 2023 Regular Meeting minutes as presented. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y
Motion passed 6-0.

V. **ADOPTION OF AGENDA**— Mr. Hochman, with second by Ms. Cough, moved to adopt the agenda as presented. Roll Call Vote:

Minutolo Y
Goldthwait Y
Cough Y
Peacock Y
Hochman Y
Friedmann Y
Motion passed 6-0.

VI. **FINANCIAL REPORT**— *Review and possible motion to accept the financial report as presented.*—Finance Director Sarah Gilbert presented the highlights of the report and answered Council questions. Following discussion, Mr. Hochman, with second by Ms. Cough, moved to approve the financial report as presented, with thanks. Roll Call Vote:

Minutolo Y
Goldthwait Y
Cough Y
Peacock Y
Hochman Y
Friedmann Y
Motion passed 6-0.

VII. **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. **Acadia National Park Advisory Commission**—*Possible motion to re-nominate Ken Smith to represent the Town of Bar Harbor on the Acadia National Park Advisory Commission and further authorize the Town Manager to send such nomination to the Secretary of the Interior.*

Mr. Hochman with second by Ms. Cough, moved to accept the Consent Agenda as published. Roll Call Vote:

Minutolo Y
Goldthwait Y
Cough Y
Peacock Y
Hochman Y
Friedmann Y
Motion passed 6-0.

VIII. **PUBLIC HEARINGS**

A. **Special Amusement Permit**

1. **Pat’s Pizza**, 6 Pleasant Street, request for new Class 1ad, single musician with mechanical amplification and dancing as submitted by Jason Fowler. There being no public comment, Mr. Hochman, with second by Ms. Cough, moved to approve the Special Amusement Permit application for Pat’s Pizza located at 6 Pleasant Street for a new Class 1ad permit, single musician with mechanical amplification and dancing as submitted by Jason Fowler. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

Motion passed 6-0.

IX. UNFINISHED BUSINESS

A. Code Enforcement Gallagher’s Travels—Code Enforcement Officer Angela Chamberlain explained the Notice of Violation and answered Council questions. Following discussion, Ms. Cough, with second by Mr. Hochman, moved to accept the Code Enforcement Officer’s report and authorize the Town’s attorney to file an enforcement action against responsible parties in the Maine District Court pursuant to 30-A M.R.S. § 4452. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

Motion passed 6-0.

B. Land Use Ordinance Amendments—*Possible motion to sign the Certifications of Ordinance and schedule public hearings for February 21, 2023 to consider placing the following on the June 13, 2023 Town Meeting Warrant*—Code Enforcement Officer Angela Chamberlain highlighted her memo explaining the amendments and answered Council questions.

1. **Double Setback Distances**—Mr. Hochman, with second by Ms. Cough, moved to tentatively place the proposed Land Use Ordinance amendment – Double Setback Distances on the June 13, 2023 Town Meeting warrant, sign the Certification of Ordinance, and schedule a public hearing for February 21, 2023. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

Motion passed 6-0.

2. **Floor Area Ratio**—Mr. Hochman, with second by Ms. Cough, moved to tentatively place the proposed Land Use Ordinance amendment – Floor Area Ratio on the June 13, 2023 Town Meeting warrant, sign the Certification of Ordinance, and schedule a public hearing for February 21, 2023. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

Motion passed 6-0.

- 3. **Conversion to Multifamily Use**—Mr. Hochman, with second by Ms. Cough, moved to tentatively place the proposed Land Use Ordinance amendment – Conversion to Multifamily Use on the June 13, 2023 Town Meeting warrant, sign the Certification of Ordinance, and schedule a public hearing for February 21, 2023. Roll Call Vote:

Minutolo Y
Goldthwait Y
Cough Y
Peacock Y
Hochman Y
Friedmann Y
Motion passed 6-0.

- 4. **Underground Utilities**—Mr. Hochman, with second by Ms. Cough, moved to tentatively place the proposed Land Use Ordinance amendment – Underground Utilities on the June 13, 2023 Town Meeting warrant, sign the Certification of Ordinance, and schedule a public hearing for February 21, 2023. Roll Call Vote:

Minutolo Y
Goldthwait Y
Cough Y
Peacock Y
Hochman Y
Friedmann Y
Motion passed 6-0.

- C. **Flavored Tobacco Ordinance**—*Possible motion to schedule a public hearing for March 7, 2023.*—Mr. Sutherland presented the draft ordinance. Without objection, Mr. Friedman requested replacing “Town Manager” with “Police Chief” in the ordinance language, as the party responsible for enforcement. Following discussion, Mr. Hochman, with second by Mr. Friedmann, moved to set a public hearing for March 7, 2023 to consider adoption of a new ordinance titled “Flavored Tobacco and Nicotine.” Roll Call Vote:

Minutolo Y
Goldthwait Y
Cough N
Peacock Y
Hochman Y
Friedmann Y
Motion passed 5-1.

- D. **Treasurer’s Warrant**—*Request of Treasurer to authorize paid bills.*— Mr. Hochman, with second by Ms. Cough, moved to sign the Treasurer’s warrants for paid bills. Roll Call Vote:

Minutolo Y
Goldthwait Y
Cough Y
Peacock Y
Hochman Y
Friedmann Y
Motion passed 6-0.

X. NEW BUSINESS

- A. School Building Project**—*Update*—Lisa Sawin of Harriman Associates, Superintendent Mike Zboray, Connors Emerson Principal Heather Webster and building committee member Kristi Losquadro gave a presentation on the status of the building project and answered Council questions. Discussion included a cost estimate of \$70 million. Estimated annual debt service on that amount (20-year bond at 4 percent) is \$5.1 million. School officials are working on seeking grants and private contributions to reduce the needed bond amount. Mr. Zboray gave an update from the group working on possible school system reorganization; a regional planning committee will be forming soon, which will begin the process of preparing a question to go to voters, perhaps in 2024, for forming a single school district.
- B. Short-Term Rental Registration Ordinance**—*Discussion of requested change*.—Code Enforcement Officer Angela Chamberlain introduced the amendment and answered Council questions. Council was supportive of the proposed change; the amendment will be added to Unfinished Business for the Feb. 7 meeting.
- C. Comprehensive Plan**—*Update*.—Ms. Peacock recommended watching the video of the Jan. 11 Comprehensive Planning Committee meeting, which includes a presentation on the recently completed Housing Needs Assessment study. More details will be presented at the next meeting, along with a summary of public input on the Comprehensive Plan process to date. Planning Director Michele Gagnon said paper copies of the Housing Needs Assessment are available in the Planning office. Councilors praised the effort to understand the current status of the problem, saying it will help design better policy responses, and recommended sharing the study with the League of Towns, Acadia National Park, and the Legislature’s Special Select Committee on housing issues.
- D. Budget Review Timeline**—*Update*.—Mr. Sutherland shared the updated schedule.
- E. Council Policies**
1. **Cable TV Public Access Policy**
 2. **Councilor-Staff Interactions Policy**

Councilors were comfortable with the proposed updates; they will be added to the Consent Agenda for the Feb. 7 meeting.

XI. TOWN MANAGER’S COMMENTS

Mr. Sutherland raised two possible budget adjustments for the current fiscal year and said they would be added to a future agenda: reallocating funds from the Transfer Station bond currently set aside for rooftop solar at that facility for purchase of a needed forklift, and purchase of a power screen (needed for Highway operations until recently borrowed from Acadia National Park) with fund balance.

XII. COUNCIL COMMENTS

Ms. Goldthwait acknowledged two “Jill’s Weekly Winners.” The first was Firefighter Aidan Pratt who recently, after learning during a routine check on a key box that a resident was alone on her 82nd birthday, returned with another firefighter and a piece of cake for her. The second was the plow guys, whose diligence for two difficult nights made it possible for her to walk to the Council Meeting without slipping and falling. She said there are four bills on local option taxes and when they were in print, she would bring them for the other Council Members to review.

Ms. Cough acknowledged the repeated trips back and forth on West Street by the plow truck named Bulldog.

Addressing the emails the Council Members have been receiving related to the upcoming litigation, she said they have been disrespectful, inappropriate, unproductive and disheartening. She said counselors are citizens of the town just like everyone else, representing the citizens of the town. They're not anyone's puppets. She said she is always happy to discuss the issues and listen to opinions, but emails with insults are frequent and intense, bordering on harassment. She'd like it to stop.

She also asked for a formal definition for B&Bs and the equivalent Transient Accommodation uses limiting the number of rooms, and for an update soon and timeline on the Cottage Street Streetscape project.

Mr. Hochman also shared his frustration with the amount of negative emails and the lack of respect. He said on his recent trip he experienced a "slice of Bar Harbor's past:" a piece of Ryan's Pizza. He too wanted to commend the Highway crew and first responders for the great job in the dangerous ice storms.

Ms. Peacock said she has received feedback that the Winter Parking solution is working well.

She said she's concerned about "for and against" and "with or without" rhetoric; it's hard to see. She has been pondering: can you really be wining if other people are losing? She and her colleagues put a lot of time into trying to learn, understand, and think about lots of different sides of the issues, but she also wants to live in this community when we get to the other side of these things.

XIII. EXECUTIVE SESSION

A. APPLL et al vs. Town of Bar Harbor—Mr. Hochman, with second by Ms. Cough, moved to enter into executive session to consult with the town attorney concerning pending litigation in APPLL et al v. Town of Bar Harbor, as permitted under 1 MRSA §405.6.E. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

Motion passed 6-0.

Mr. Sutherland and attorneys Stephen Wagner, Jonathan Hunter and Allison Economy participated in the executive session. Council returned to regular session at 11:12 p.m.

Ms. Goldthwait, with second by Mr. Hochman, moved to authorize the Town Attorney to take all appropriate action to facilitate the Council's participation on behalf of the Town in a proposed mediation of the preliminary injunction before a magistrate of the U.S. Federal District Court to be held on January 26 or as otherwise scheduled by the Court in the matter of APPLL, et al. v. Bar Harbor, Civil Action No. 1:22-cv-616-LEW. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y
Hochman Y
Friedmann Y
Motion passed 6-0.

B. Town Manager’s Evaluation—Mr. Hochman, with second by Ms. Cough, moved to enter into executive session to discuss a personnel matter pursuant to 1 MRSA §405.6.A. Roll Call Vote:

Minutolo Y
Goldthwait Y
Cough Y
Peacock Y
Hochman Y
Friedmann Y
Motion passed 6-0.

Mr. Wagner participated in the executive session. Council returned to regular session at 12:55 a.m.

XIV. ADJOURNMENT—Mr. Hochman with second by Ms. Cough, moved to adjourn the meeting at 12:59 a.m. Roll Call Vote:

Minutolo Y
Goldthwait Y
Cough Y
Peacock Y
Hochman Y
Friedmann Y
Motion passed 6-0.

Elizabeth N. Graves, Town Clerk