

**MINUTES**  
**Bar Harbor Town Council**  
**March 21, 2023**

**I. CALL TO ORDER** – 6:31 p.m. In attendance were Councilors Valerie Peacock, Matthew Hochman, Joe Minutolo, Jill Goldthwait, Erin Cough, and Gary Friedmann; Interim Town Manager Sarah Gilbert and Deputy Town Clerk Lynn Kenison Higgins. **Ms. Peacock** said that writing these opening statements every two weeks helped her mark the passage of time and view the importance of events. Meetings have been held, scheduled and agendas built, seasons have changed and clocks are changed, elections are kicked off and lobster boat races are scheduled; what is noteworthy and what to talk about? It all seems noteworthy. And it shows the hard work the Councilors have before them. And the agenda tonight speaks of that work before us, some ongoing and some not making headlines. It also speaks of all the work involved towards managing and governing a town.

**A. Excused Absence(s)**—None

**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.*—There wasn't any public comment.

**IV. APPROVAL OF MINUTES**

**A. March 6, 2023 Special Meeting**

Mr. Hochman with second by Ms. Cough, moved to approve the minutes of the March 6, 2023 Special Meeting, amended with corrections to the times that were listed. Roll Call Vote:

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

**B. March 7, 2023 Regular Meeting**

Mr. Hochman with second by Ms. Cough, moved to approve the minutes of the March 7, 2023 Regular Meeting 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. **TREASURER’S 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. Quitclaim Deeds**—*Possible motion to release the Town’s interest in 134 Ledge lawn Avenue (Tax Map: 107-224-000) and 67 School Street (Tax Map: 107-144-000) and authorize Town Manager to sign quitclaim deeds for said properties.*

**B. Refunding Bonds**-*Possible motion to sign order to refinance 2011 and 2013 bonds.*

**C. Reclass Union wages FY2023**-*Possible motion to transfer Public Works and Fire Union wages.*

Mr. Hochman, with second by Ms. Cough, moved to approve the consent agenda as published. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

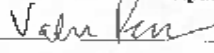
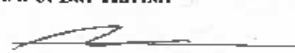
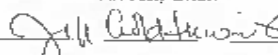

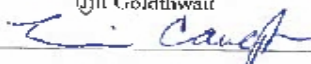

Motion passed 6-0.

**Order  
Of the Bar Harbor Town Council  
2023 \$3,240,000 Refunding Bonds**

Ordered, that the Town Treasurer, proceed to work with the Town's Bond Counsel and the Town's Financial Advisor to refinance the remaining principal of the original 2011 and 2013 \$8,405,000 bond issues, not to exceed \$3,240,000, and further that full authority is hereby granted to the Council Chair and the Town Treasurer to do all things necessary to accomplish the objectives of this vote.

Given under our hands this 21<sup>st</sup> day of March, 2023.

**Municipal Officers of the Town of Bar Harbor**

 Valerie Peacock, Chair	 Matthew Hochman, Vice-Chair
 Jill Goldthwait	 Gary Friedmann
 Erin Cough	 Joe Minutolo

Councilor

**VIII. PUBLIC HEARINGS**

**A. Special Amusement Permit**

1. **Siam Orchid, 30 Rodick Street, request for Class 3ad, three or more musicians with mechanical amplification and dancing as submitted by Hatsana Phanthavong.** Following no of public comments and Councilors' discussion, Mr. Hochman with second by Ms. Cough, moved to approve the Special Amusement Permit application for Siam Orchid located at 30 Rodick Street for a new Class 3ad permit, three or more musicians with mechanical amplification and dancing as submitted by Hatsana Phanthavong. Roll Call Vote:

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

**B. FY2024 Budget**

1. *Public comment* on the proposed budget for fiscal year 2024, July 1, 2023 to June 30, 2024.—Public comment was offered by Mr. David Bowden.

2. *Possible adoption of the proposed budget as presented.*—Mr. Friedmann made a motion to amend the budget by adding \$17,400.00 for the Chamber of Commerce which did not progress due to lack of a second. Following discussion, Mr. Hochman, with second by Ms. Goldthwait, moved to approve the FY2024 Budget as presented. Roll Call Vote:

- Minutolo      Y
- Goldthwait    Y
- Cough        Y
- Peacock      Y
- Hochman     Y
- Friedmann   Y

Motion passed 6-0.

**IX. UNFINISHED BUSINESS**

**Treasurer’s Warrant**—*Request of Treasurer to authorize paid bills.* Mr. Hochman moved with a second by Ms. Cough, to approve Treasurer’s request to authorized 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. Council Seat Vacancy**-*Move to appoint seat left vacant by Jeff Dobbs resignation.* Following discussion, Mr. Friedmann made the motion, with second by Mr. Hochman to appoint J. Clark Stivers to fill the seat left vacant on the Town Council by the resignation of Mr. Dobbs, until the June 13, 2023 election. Roll Call Vote:

- Hochman      Y
- Peacock      Y
- Friedmann    Y
- Minutolo     Y
- Goldthwait   Y
- Cough        Y

Motion passed 6-0.

**B. Annual Town Meeting June 2023**—Overview presented by the school building project team; Superintendent Mike Zboray, School Board member Vice Chair Marie Yarborough and Chair person Lilea Simmis, Conners-Emerson Principal Heather Webster, Nancy Thurlow and School Board members Misha Mytar and .

1. **Conners Emerson School Bond**-*Possible motion to sign Order.* Following discussion, Mr. Hochman moved with a second by Ms. Cough, to sign the Order placing the Conners-Emerson School Project on the June 13, 2023 Town Meeting Warrant. Roll Call Vote:

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

**Order**  
**Of the Bar Harbor Town Council**  
**For the June 13, 2023 Town Meeting**

It is hereby ordered that the following article be placed on the town meeting warrant with voting to be held by Australian ballot.

**Warrant Article**

Article      **NEW ELEMENTARY SCHOOL**– Shall the Town of Bar Harbor:

1. **Approve** the construction and equipment of a new elementary school to replace the existing Connors Emerson school buildings (the "Project");
2. **Authorize** the Town Council, acting pursuant to the provisions of 30-A M.R.S.A. Section 5772, to provide by Order for the issuance of general obligation securities of the Town of Bar Harbor (with or without call provisions and with or without premium, and including temporary notes in anticipation of the sale thereof) in an aggregate principal amount not to exceed \$58,538,288 (the "Bonds");
3. **Appropriate** the proceeds of the Bonds, including principal of up to \$58,538,288, as well as bond premium and investment proceeds, to provide for the costs of the Project, including issuance costs;
4. **Delegate** the discretion to fix the date(s), maturity(ies), interest rate(s), denominations(s), place(s) of payment, form and other details of said securities, including execution and delivery of said securities on behalf of the Town of Bar Harbor, and to provide for the sale thereof, to the Treasurer and Chair of the Town Council; and
5. **Accept** grants and donations for the Project ("Project Gifts"), if any

**FINANCIAL STATEMENT**  
 [30-A-M.R.S.A. §5772 (2-A)]  
 As of 6/13/2023

<b>1.</b>	<b>Total Town Indebtedness- Principal</b>	
	A. Bonds outstanding and unpaid	\$14,667,304
	B. Bonds authorized and unissued	\$51,997,600
	C. Bonds to be issued if this article is approved:	<b>\$58,538,288</b>
	<b>TOTAL</b>	<b>\$125,203,192</b>
<b>2.</b>	<b>Costs</b>	
	At an estimated interest rate of 4%, the estimated costs to finance this Project over a term of 25 years will be:	

Principal:	\$58,538,288
Interest:	\$31,610,520
Total Debt Service:	\$90,148,808

**3. Validity**

The validity of the Bonds and of the voters' ratification of the Bonds may not be affected by any error in the above statements. If the actual amount of the total debt service for the bond issue varies from the estimate, the ratification by the voters is nevertheless conclusive and the validity of the bond issue is not affected by reason of the variance.


/s/

Sarah M. Gilbert  
Treasurer  
Town of Bar Harbor

*Explanation: The Town previously authorized the issuance of \$3,000,000 in bonds for the design of the replacement Connors Emerson School. This Article, if approved, authorizes the Town to issue Bonds to demolish the existing school buildings and to construct and equip a new consolidated school building. Project Gifts will be used to either reduce the amount of Bonds issued or to pay debt service on the Bonds, depending on when Project Gifts, if any, are received.*

Given under our hands this 21<sup>st</sup> day of March, 2023.

**Municipal Officers of the Town of Bar Harbor**



Valerie Peacock, Chair




Matthew Hochman, Vice-Chair



Jill Goldthwait



Gury Friedmann



Erin Cough



Joe Minutolo

Councilor

2. **Black Friar Inn** -Possible motion to sign Order for sale of Town owned property. Mr. Hochman disclosed a possible conflict of interest, as his adult daughter is employed at the black Friar Inn. Following discussion, Ms. Cough moved with a second by Ms. Peacock that Mr. Hochman did have a conflict of interest. Roll Call Vote:

Hochman            A  
Peacock           N  
Friedmann       N  
Minutolo          N  
Goldthwait       N  
Cough             N

Motion did not pass 1A-5.

Following discussion, Ms. Goldthwait moved to amend the price, with second by Ms. Cough, to sell Town property of 969 square feet (Map 104, Lot 58) to Steve Woitasek and Deborah Vickers for the amount \$53, 295.00, minus \$1,000.00 rent already paid and \$600.00 paid towards appraisal, for a total of \$51,695.00. Roll Call Vote:

Hochman           Y  
Peacock           Y  
Friedmann       Y  
Minutolo          Y  
Goldthwait       Y  
Cough             Y

Motion passed 6-0.

Mr. Hochman moved, with second by Ms. Cough, to sign the Order placing the sale of Town property of 969 square feet (Map 104, Lot 58) to Steve Woitasek and Deborah Vickers for the amount \$53, 295.00, minus \$1,000.00 rent already paid and \$600.00 paid towards appraisal, for a total of \$51,695.00, on the June 6, 2023 Town Meeting Warrant. Roll Call Vote:

Hochman           Y  
Peacock           Y  
Friedmann       Y  
Minutolo          Y  
Goldthwait       Y  
Cough             Y

Motion passed 6-0.

**Order  
Of the Bar Harbor Town Council  
For the June 6, 2023 Town Meeting**

It is hereby ordered that the following article be placed on the town meeting warrant with voting to be held on the floor of the open town meeting.

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Warrant Article




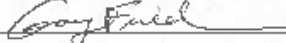
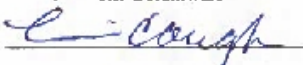
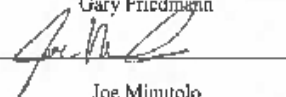
**Article** \_\_\_ **SALE OF TOWN OWNED PROPERTY**— Shall the Town of Bar Harbor:

Shall the inhabitants of the Town of Bar Harbor allow the Town Council to sell, for an amount of \$51,695.00, a parcel of land on Summer Street, previously known as the Hopkins Lot, Map 104 Lot 58, and authorize the Town Council, or their duly authorized designee(s), on behalf of the Town, to execute and deliver Documents and take further action as they may deem necessary in order to complete the sale?

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Given under our hands this 21<sup>st</sup> day of March, 2023.

**Municipal Officers of the Town of Bar Harbor**

 <hr style="width: 100%;"/> Valerie Peacock, Chair	 <hr style="width: 100%;"/> Matthew Hochman, Vice-Chair
 <hr style="width: 100%;"/> Jill Goldthwait	 <hr style="width: 100%;"/> Gary Friedmann
 <hr style="width: 100%;"/> Erin Cough	 <hr style="width: 100%;"/> Joe Minutolo

Councillor

**C. Ethics Ordinance**—*Discussion with members of the public.*—Ms. Peacock said that the Town Council is asking for any input from the public and from people who have prior experience with the Ethics Ordinance and the Ethics test. The goal is to clear up any discrepancies, make any necessary changes and improve the existing training program. There is a survey starting today on the town’s website. Discussion followed public comments by Ruth Eveland and Anna Durand.

**D. Fire Department Retirement Plan Change**-*Possible motion to approve the Firefighter Union to upgraded plan.*—Ms. Gilbert and Fire Chief Matt Bartlett presented an overview and update about the Maine Public Employees Retirement System (Maine Pers) upgraded plan. This upgrade would change from a 4C-25 years of service at age 55 with 50% of the averaged three highest earned years; to a 3C- 25 years of service with no age requirement and benefits based on



66.7% average of three highest earned years. Following discussion, Mr. Hochman motioned with second by Ms. Cough, to adopt Special Plan 3C Maine Pers Retirement Plan for the Bar Harbor Fire Department employees that work more than twenty hours a week and are not seasonal or temporary as defined by the appendix of Maine Pers rule Chapter 802, for service accrued after June 30, 2023; service accrued before July 1, 2023 will remain under plan 4C. Town Council Chair Valerie Peacock will have authority to sign for the amended agreement between the Town and Maine Pers.

Roll Call Vote:

<u>Hochman</u>	<u>Y</u>
<u>Peacock</u>	<u>Y</u>
<u>Friedmann</u>	<u>Y</u>
<u>Minutolo</u>	<u>Y</u>
<u>Goldthwait</u>	<u>Y</u>
<u>Cough</u>	<u>Y</u>
<u>Motion passed</u>	<u>6-0.</u>

**E. Leary’s Landing** –*Discussion* of renewing lease of Town owned land on Main Street. Following discussion, Ms. Goldthwait amended the motion, with second by Mr. Hochman, to approve renewing a two-year lease agreement with Leary’s Landing. Roll Call Vote:

<u>Hochman</u>	<u>Y</u>
<u>Peacock</u>	<u>N</u>
<u>Friedmann</u>	<u>Y</u>
<u>Minutolo</u>	<u>N</u>
<u>Goldthwait</u>	<u>Y</u>
<u>Cough</u>	<u>Y</u>
<u>Motion passed</u>	<u>4-2.</u>

**F. Town Manager Search** –*Discussion* of next steps in the search for Town Manager.

**Ms. Peacock** presented the update with the meeting with Dave Barrett from the Maine Municipal Association. He plans to use Councilors input on job description and priorities to draft the job advertisement, as well as suggesting where to advertise. Discussion with MMA also focused on public participation as well as different options to conduct the candidate search. Councilors discussed options that could ensure a structured search process would be in place. Ms. Peacock plans to continue working with Mr. Barrett for a working time line.

**XI. TOWN MANAGER’S COMMENTS**—Ms. Gilbert said that the Town applied for a Congressional Discretionary Grant on March 15, 2023, in the amount of \$1,500,000.00 for the West Street Gateway Project. In regards to 77 Cottage Street and the one-way detour, the developer has said that the road will be back by May 15, 2023. The barriers and fencing belong to the developer and not to the Town. The developer is fully insured and names the Town as certificate holder. If there are any safety violations suspected, please contact the Bar Harbor Police Department.

**XII. COUNCIL COMMENTS**—

**Mr. Minutolo** passed on making any comments.

**Ms. Goldthwait** said that the parking bill LD 166 passed both the Maine State House of Representatives and the Senate, and would now just require the Governor’s signature. She said to thank Representative Williams for submitting this bill. She also gave updates on other acts and bills and their status.

**Ms. Cough** had commented previously about the budget, so passed on making any comments.

**Mr. Hochman** gave a shout out to the MDI High School Drama team for their win last week. He said that there was a lot of incredible talent. He gave them many broken legs for their meet next week. He said that an email received today was aggressive and close to threatening in nature. He paraphrased that it basically said do what we want or we will rule by citizens’ initiative. He found it disturbing that anyone thought that was a means of governing a municipality. He encouraged anyone to take out nomination papers to sit on the Council rather than starting a citizens’ initiative.

**Mr. Friedmann** wanted to address the local option sale’s tax. He said it would be great to work with the Bar Harbor Chamber of Commerce, and to get the State Chamber to validate the effectiveness of a hospitality tax, which could significantly reduce the burden on citizens’ property taxes. Mr. Friedmann didn’t feel an increase would inhibit tourism in Maine.

**Ms. Peacock** said that she met with the Chamber of Commerce Director Bo Jennings to talk about the local options sale’s tax; trying to understand it and how it works, and to look at examples of other municipalities implementation. Ms. Peacock said she would be working with Ms. Gilbert to better understand the details. Ms. Peacock also wanted to thank everyone’s hard work to put the items on tonight’s agenda—staff, Council and Warrant Committees, School Committee and all the citizens that reached out to talk to council members. There was a tremendous amount of work involved and she said how much she appreciated everyone being a part of the grind to get that hard work done.

**XIII. EXECUTIVE SESSION-9:15 pm. Meeting with Town Attorney, Stephen Wagner, to discuss APPLL, et al. v. Bar Harbor— Executive Session Pursuant to 1 M.R.S. § 405(6)(E). Consultation between the Town Council and the Town Attorney concerning APPLL, et al. v. Bar Harbor, Civil Action No. 1:22-cv-616-LEW. *The Council shall enter executive session to participate in continued mediation; engaging, through counsel, in a remote settlement conference hosted by the U.S. District Court of Maine, at which all parties to the case are expected to participate, concerning the pending motion for a preliminary injunction.*— Mr. Hochman, with second by Ms. Goldthwait, moved to enter into executive session pursuant to 1 M.R.S. § 405(6)(E). Consultation between the Town Council and the Town Attorney concerning 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.

Mr. Wagner and Ms. Gilbert participated in the executive session. Council returned to regular session at 10:05 p.m.

**Action concerning APPLL, et al. v. Bar Harbor, Civil Action No. 1:22-cv-616-LEW, if any—Mr. Hochman with second by Ms. Cough, moved to support the statement crafted in Executive Session. Roll Call Vote:**

- Minutolo        Y
- Goldthwait    Y
- Cough         Y
- Peacock        Y
- Hochman       Y

Friedmann Y  
Motion passed 6-0.

Statement:

The Bar Harbor Town Council has participated in mediation for the motion for a preliminary injunction and are pleased to share that after several rounds of negotiations with all parties, the Court has issued an expedited scheduling order that achieves the Council’s goals of getting an early and efficient trial so that we can get a final answer from the Court as to whether the ordinance is constitutional.

If the case remains on track for a trial by July, the Council plans to enforce the Cruise Ship Disembarkation amendments to the Land Use Ordinance after the Court issues a final decision. Not enforcing the Ordinance while we continue to make rules means that we will operate under the published existing schedule for 2023 and the existing SOPs to manage ship visitation until a decision is reached. The 2023 schedule represents a 30% reduction of visitation from 2022 seasons.

This enforcement approach is consistent with the Council’s goals of getting certainty from the Court that the Ordinance is constitutional as soon as possible, preserving the Town’s home rule authority to regulate cruise ship disembarkation, and minimizing the potential financial liability of the Town.

We see this as an efficient, responsible, and pragmatic way to execute the will of the voters. In the interim, the Council has directed the staff to continue the rulemaking process so that we are in a position to enforce the Cruise Ship Disembarkation ordinance the day after the Court declares it constitutional—an outcome that we are working hard to achieve.

**XIV. ADJOURNMENT— Mr. Hochman with second by Ms. Cough, moved to adjourn the meeting at 10:08 p.m. Roll Call Vote:**

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

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Lynn Kenison Higgins, Deputy Clerk