

MINUTES
Bar Harbor Town Council
January 3, 2023

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

Ms. Peacock wished everyone a Happy New Year. She said the storm in the last week of 2022, with hurricane-force winds and waves over the town pier, made sure we wouldn't forget it. She thanked the town staff, emergency responders and utility crews who worked to respond and keep people safe.

She noted that the meeting agenda will be amended to add discussion of a new lawsuit related to the Land Use Ordinance amendment limiting cruise ship disembarkations approved by the voters in November. She said the vote speaks to the magnitude to which residents want to reduce cruise visitation in Bar Harbor and town staff is working to develop rules to implement the new LUO requirements. On Friday, a complaint was filed against the town challenging the LUO amendment. The two items to be added to the agenda are a New Business item to provide town attorneys a chance to share initial information with the public, and an Executive Session to allow the Council to consult with the attorneys.

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. COMMITTEE APPOINTMENTS

A. Harbor Committee—*Ed Monat, term expiring 2025*— Appointments Committee recommends and Ms. Goldthwait nominated Ed Monat to the Harbor Committee. There were not any other nominations. Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

By a vote of 6-0 Ed Monat was appointed.

III. READING OF THE MEETING GROUND RULES

IV. 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.*—Anna Durand spoke about the lawsuit brought by APPLL et al. (not yet added to the agenda). She said she and her husband have owned several small businesses and employed many year-round and seasonal residents and watched

with pride as many former employees have gone on to open their own businesses. She said Ocean Properties and APPLL do not speak for them; nobody owes her a living as a tourism-based business owner. She said tourism is not low-risk, high-reward; it is high-risk, high-reward. She encouraged the Council to seek support in fighting the lawsuit from the state and from groups supporting ocean health, sustainable development and responsible tourism.

V. APPROVAL OF MINUTES

A. December 20, 2022 Regular Meeting—Mr. Hochman with second by Ms. Cough, moved to approve the December 20, 2022 Regular Meeting minutes as presented.

Roll Call Vote:

Minutolo Y

Goldthwait Y

Cough Y

Peacock Y

Hochman Y

Friedmann Y

Motion passed 6-0.

VI. ADOPTION OF AGENDA—Without objection Mr. Hochman requested adding “APPLL et al. vs. Town of Bar Harbor” to New Business as item X.C and adding Executive Session “APPLL et al. vs. Town of Bar Harbor” as item XIII. Then Mr. Hochman, with second by Ms. Cough, moved to adopt the agenda as amended. 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. March – *Possible motion* to approve use of High, Cottage, Main and Mount Desert Streets for the Martin Luther King Day March, on January 16, 2023.

B. Quitclaim Deeds—*Possible motion* to release the Town’s interest in 2 Cadillac Avenue (Tax Map: 104-027-000) and 295 Bay View Drive (Tax Map: 201-004-000) and authorize the Town Manager to sign quitclaim deeds for said properties.

C. Community Action Grant—*Possible motion* to authorize the Town Manager to sign award confirmation accepting grant funds for municipal building electrification project.

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 3ad, three or more musicians with mechanical amplification and dancing as submitted by Jason Fowler. (Tabled from Dec. 20, 2022)—Jason Fowler, Zana Brooke, Micala Delepierre and Kemiesha Pinnock, on behalf of Breakwater Property Management, offered public comment. Following discussion 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 3ad permit, three or more musicians with mechanical amplification and dancing as submitted by Jason Fowler. Roll Call Vote:

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

Motion failed 1-5. Councilors encouraged the applicant to submit a new application for a smaller class of permit.

- B. FY23 Water Budget Ordinance Amendment #2022-09**— *Public comment and possible motion to adopt the FY23 Water Budget Ordinance Amendment.*—Zana Brooke offered public comment. Following discussion Mr. Hochman, with second by Ms. Cough, moved to adopt the FY23 Water Budget Ordinance Amendment as presented. Roll Call Vote:

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

Motion passed 6-0.

- C. FY23 Sewer Budget Ordinance Amendment #2022-10**—*Public comment and possible motion to adopt the FY23 Sewer Budget Ordinance amendment.*—There not being any public comments, Mr. Hochman with second by Ms. Cough, moved to adopt the FY23 Sewer Budget Ordinance Amendment as presented. Roll Call Vote:

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

Motion passed 6-0.

IX. UNFINISHED BUSINESS

- A. 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. Marine Resources Committee**—*Update on Otter Creek*—Committee chair Chris Petersen spoke about a community science effort in Otter Creek led by Thriving Earth Exchange for which he is one of the consulting scientists. He also updated the council on shellfish work funded by a Maine Community Foundation grant. He noted that the way shellfish co-management is set up between towns and the state, most clam committees have voting members whose livelihoods are impacted by decisions of the committee. However, taking such votes might violate the town’s Ethics Ordinance. The committee’s current approach is to have the few commercial clambers attend committee meetings (earning conservation hours by doing so) but not be voting members. He said being strict on this question has worked out well, he said, except it’s not quite in line with the co-management concept of harvesters having a direct voice. Council supported continuing the current practice.
- B. Flavored Tobacco Ordinance**—*Discussion*—Mr. Friendman introduced Julie Daigle of Healthy Acadia and Art Blank, former CEO of MDI Hospital and a Healthy Acadia board member, who gave a presentation and answered Council questions. Council supported moving forward with bringing a proposed new ordinance to Unfinished Business at the Jan. 17 meeting.
- C. APPLL et al v. Town of Bar Harbor**—Attorneys Stephen Wagner and Jonathan Hunter gave a brief summary of the complaint filed in U.S. District Court Dec. 29, 2022 and the motion for preliminary injunction filed the same day, which seeks to block implementation of the cruise ship disembarkation amendment while the complaint is pending. Ms. Peacock said the Council will aim to share as much information as possible with the public about the timeline of and reasoning for any Council actions on the matter.

XI. TOWN MANAGER’S COMMENTS**MRC Updates**

Staff from the Manager’s Office attended the Municipal Review Committee 2022 Annual Meeting on December 14th to hear progress updates on the Hampden waste facility.

During the meeting, representatives from Revere Capital Advisors and MRC shared details of ongoing discussions with Maine DEP to secure the state licenses and beneficial use permits necessary ensure it can sell pulp and briquettes created from municipal waste received by the plant, which would otherwise have to be landfilled at cost. Securing these permits was described as the “linchpin” for the consortium of investors that work through Revere Capital to demonstrate that the

facility would be profitable, and it was reported that Revere and DEP are close to finalizing agreements on these changes.

As such, plans for Revere to acquire the majority stake in Municipal Waste Solutions LLC (the company formed by MRC to purchase and operate the plant) are continuing to move forward, with the first phase of financial close planned for January 25th, 2023 in alignment with the next scheduled quarterly MRC Board meeting, which members can attend in-person or virtually.

It was also announced during the Annual Meeting that Tony Smith of Mount Desert was re-elected to the MRC Board of Trustees with 24% of the vote, along with Waldoboro Selectman Robert Butler (33%) and Oakland Town Manager Ella Bowman (24%).

Staff will continue to keep Council posted as the acquisition moves forward and bring any recommendations regarding waste management with the potential reopening of the facility.

CivicReady

Last month, the town acquired a mass notification system which will be implemented over the next 10 weeks. He said this is in part because of the new winter parking permit system, which currently can only contact permit holders by email. The new system will help address many of the communication gaps that have been brought forward by the council, public safety, public works, schools, and the community.

CivicReady allows the town to communicate with residents in the way that works best for them, whether that's a phone, email, text, or through social media. Communication can also be shared through geotagging, which allows the town to target alerts to specific areas. This is especially useful for controlled incidents that may only impact a few people.

FY 2023 Federal Appropriations

The Federal Appropriations bill (aka Omnibus) was signed into law Friday December 23rd and because of the requests and efforts of our Senators, the Bar Harbor Up Island Water Tank Storage project (\$1,439,000) was included in final bill.

This funding will partially cover the replacement of a water tank a new and larger version with the capacity to hold both a public water supply and a fire suppression supply volume. Sometime over the next month or so we'll hear directly from the funding agency about the next steps to formalize funding for our project.

Town staff would like to publicly thank Senator King and Senator Collins and all of their staff for helping to make this a reality.

Budget Timeline

Starting last week and extending into this week, we have been working to prepare for the FY24 budget. In addition to the numbers, we've also been looking at the timeline and process for this year's cycle based on feedback we received after last year's process.

Our intent is to deliver the budget binders to Council and Warrant Committee no later than January 20th. There will be four evenings (Tuesdays/Thursdays) of presentations that will incorporate all aspects of the budget and provide opportunities for initial questions from the Council and Warrant Committee:

- Jan. 24, 6:30 p.m. Tuesday – Overview of the budget from Town Manager, Presentation from Education
- Jan. 26, 6:30 p.m. Thursday – Public Infrastructure (PW, Parks and Rec, Supporting Agencies)
- Jan. 31, 6:30 p.m. Tuesday – Public Safety (Police, including Harbor, and Fire)

- Feb. 2, 6:30 p.m. Thursday – General Government (Mgr, Clerk, Finance, Planning) / Cooperating Agencies

After these initial presentations, the Council and the Warrant Committee, in their own capacities will review the proposed budget and report suggested changes for consideration at the Joint meeting on February 28th.

More about this process and timeline will be addressed as part of the overview presentation on 1/24. Mr. Sutherland asked anyone who has additional ideas for how to better connect with the community, share information about the budget and the process within our framework to let him know.

Cruise Ship Disembarkation

As mentioned at the meeting on December 20th, it is going to take some time to draft rules and regulations around the citizen petition to limit cruise ship disembarkations. Staff continue to meet to determine the logistics, staffing, and needs to make this work. Much of what is being considered will have impacts on both the Fiscal Year 23 and Fiscal Year 24 budget – which will be discussed in the weeks and months ahead.

2022 Year in Review of Council Actions

Mr. Sutherland also shared a 2022 Year in Review of Council Actions, emailed to the Council ahead of the meeting. He said this is by no means an exhaustive list of what the Council approved, accepted, or reviewed in 2022 (i.e. – we did not count the number of Special Entertainment Permits or Vehicles for Hire that were approved by Council), but it does point to the amount of work that goes into being in an elected position here in the Town of Bar Harbor.

Council Policies Reviewed and Amended – The Council has adopted 39 policies that guide various aspects of running the Town. In July, we began the process of reviewing and amending policies (specifically the 18 below), and we intend to review the full slate of policies before the end of June 2023.

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|-----------------------|-----------------------------|
| • Rules of Order | • Debt Management |
| • Acquired Property | • Debt Compliance |
| • Purchasing | • Investment |
| • Tax Payment | • Cooperating Agencies |
| • Personnel Rules | • Consent Agreement |
| • Snow Removal Policy | • Curb Cut |
| • Poverty Abatement | • Road and Sidewalk Opening |
| • Appointments | • Liquor Licensing |
| • Land Acquisition | • Alcohol Beverages |

Secured Alternative Revenue Sources – While this wasn’t one of the three top priorities from the March retreat, it did make the shortlist as a needed area of effort. In order to gain access to new and potential sources of funding, the Town:

- Re-joined the **Maine Service Center Coalition** in an effort to advocate for a local option sales tax and other state-wide legislation to support towns that generate significant sales tax for the state;
- Joined the **Community Resilience Partnership** program through the Governor’s Office of Policy Innovation and the Future in order to access resources and support for local climate action efforts;
- Hired two contract grant writers to assist us in big ticket grant writing efforts

On that front, we applied for and were awarded a number of grants and funding opportunities this year to support key Town projects:

- **\$1,370** – Federal Byrne Justice Assistance Grant – for police department equipment
- **\$10,332** – Maine Community Foundation – Maine Shellfish Restoration and Resilience Fund
- **\$91,722** – Community Resilience Partnership – Community Action Grant – Climate Action Plan Community Engagement and public EV Charger stations (partnership with Mount Desert/Tremont)
- **\$50,000** – Shore and Harbor Planning Grant – Ferry Terminal Master Plan
- **\$1,439,000** – Congressionally Directed Spending – Up Island Water Tank Storage project
- **\$50,000** – Community Resilience Partnership – Municipal Building Electrification
- **\$7,000** – Maine DOT/HCPC – Climate Vulnerability Mapping

The Town also created a number of donation banks to receive funds on behalf of ongoing community-wide projects, including:

- Village Green Band Stand
- Dog Park Design
- Conners-Emerson School Building Project

Updated Ordinances – Significant work on streamlining our existing ordinances was completed this year, leaving us in a good position to continue evaluating and throughout the Comprehensive Plan process. Amended ordinances included:

- **Ethics** – Amendment to add Social Media Policy
- **Land Use** – Removal of two-thirds majority vote requirement
- **Vehicle and Traffic** – Amendment to add additional stop signs and a second round to remove ‘no overnight parking’ in the winter months and move to an as needed basis.
- **Shellfish Conservation** – Amendment to add additional species of shellfish to the ordinance.
- **Short-Term Rental Registration** – Amendments to address inconsistencies between different inspection requirements from different codes
- **General Assistance** – Routine annual adjustments to the maximum levels of assistance

Two new ordinances were also passed:

- Senior Property Tax Assistance Program
- Long-Term Rental Registration Program

Updated Budget Process – Our revised budget process resulted in a nearly fully supported FY-23 budget by both the Council and the Warrant Committee (with a slight discrepancy around the CIP budget for the School). Two major bonds were also approved at the June Town Meeting:

- **Priority Infrastructure Improvements** – \$43.8 million-dollar bond to address Combined Sewer/Stormwater regulatory requirements, aging sewer infrastructure, and street scape that will be impacted by these repairs.
- **Higgins Pit Solar Array** – \$4.35 million-dollar bond to build a solar array in the Higgins Pit site. Likely a brownfield site that would not be suitable for housing or other uses. Sundog Solar was the firm chosen last winter to assist the town. Work has been ongoing since last Spring to gather needed data and assess size of the solar project. Earlier this month, the Town signed a contract with Sundog Solar who will build us a 1.55 MW solar array system that will generate 84% of the Town’s current electricity usage and at today’s rates, save us \$15 million in electricity expenses over the life of the project.

Supported Employee Retention/Recruitment – This was another focus area that was on the larger priority list that we nonetheless made good progress on this year. We successfully negotiated our two union contracts, made impactful updates to the Personnel Rules, and been working on a comprehensive benefits document detailing existing benefits to employees.

New staff positions created through the budgeting process this year included:

- Fire Department – Deputy Fire Chief of EMS (Shared with Mount Desert)
- Finance Department – Human Resource Specialist (Shared with Mount Desert)
- Manager’s Office – Communications Coordinator
- Manager’s Office – Sustainability Coordinator

In order to remain competitive in a tight labor market, keep up with demand, and ensure a greater work/life balance for Town employees, the Fire Department added an additional shift (resulting in four additional firefighters/EMTs), and Public Works added an additional labor position.

Reached Key Milestones for Long-Range Planning – As Council works to respond to an uncertain economic landscape and changing climate, we made good progress on major planning efforts in support of the vision of a sustainable and vibrant Bar Harbor community:

- The Comprehensive Plan Committee began its work to create a Bar Harbor 2035 Comprehensive Plan that will serve as the Council’s guiding document for the next ten years. This work included hosting two community forums and conducting a Housing Needs Assessment that has gathered over 800 responses from a recent survey, and the work of the CPC will continue throughout 2023.
- We held a Priority Setting Retreat with Council, Committee/Board Chairs, and Department Heads on March 8th, 2022 that led to Priority Goals for FY23 shared with Council in July and updated with Council at their November workshop. A list of goals for the remainder of FY23 and into FY24 were accepted by the Council at their meeting on December 20th, 2022
- Council accepted the Open Space Plan that had been developed by the Conservation Commission prior to 2022 but had never formally been accepted by the Council. Now with its support, elements of it will be incorporated/referenced to in the Comprehensive Plan.
- The Climate Emergency Task Force updated and expanded the goals and strategies of the Climate Action Plan to include action items that drive forward community-wide reductions in greenhouse gas emissions. This framework is being worked on by our Sustainability Coordinator and elements of the Plan will be integrated into the Comprehensive Plan.
- Council developed and accepted a Cruise Management Plan to reduce cruise ship visits and traffic in September and October by 30%.
- We partnered with UMaine to conduct a waste audit in July 2022, where volunteers collected and sorted a total of 753.95 pounds of municipal solid waste at the Transfer Station. The top five categories of items disposed of across all waste materials were:
 - Food Waste (217.7 lbs., 28.87 %),
 - Trash (139.8 lbs., 18.54%), Pet and Baby Waste (94.7 lbs., 12.56%),
 - Compostable Paper (78.3 lbs., 10.39%)
 - Single use containers (71.2 lbs., 9.44%).
- We signed a contract with Consolidated Communications to build out and lease a fiber internet network for the Municipal Building, with connections to Mount Desert. As part of this agreement, CCI will assist the Town in applying for grant monies to further build out

Fidium fiber internet to the under/served parts of Bar Harbor, and the Town is utilizing ARPA funds to pay for a Broadband Gap Analysis study to support this work.

XII. COUNCIL COMMENTS

Mr. Minutolo wished everyone a Happy New Year and noted there are challenges ahead.

Ms. Goldthwait said Councilor Dobbs is doing better. She said that the Shore Path and town pier sustained damage from the storm. She said the Village Improvement Association usually takes care of the Shore Path stuff, but there are some areas where the water went into the wall, tore big holes in the path, and the rocks may fall out of the wall as a result. On the pier, large granite pieces are gone and water went under the pier on the south side and damaged the sidewalk. She asked if traffic cones could be placed to alert pedestrians.

She also said she had received a mailed notice of a Planning Board Public Hearing and had trouble understanding what the terms mean. She said it would be great if there were some explanation or reference to sections of the ordinance.

Finally, related to the budget, she said there are a lot of needs for additional resources for the community, so it would be helpful to have an overall sense of where we need positions and what the priorities are.

Ms. Cough also wished Mr. Dobbs well and hoped he would be home soon; the Council misses him and would like to see him back. As to the January 4th Planning Board hearings, she encouraged anyone interested in development and improving housing opportunities to attend. She said the four proposed Land Use Ordinance amendments are important and some are barriers to responsible, sustainable development.

Mr. Hochman also wished everyone a Happy New Year. He said he had a long, positive conversation at a New Year's Eve celebration with a resident who has very different opinions from his own on many issues. It led him to want to reach out more, this year, to work with some of those people with whom he disagrees. He said we may see "making Bar Harbor better" in different ways, but all are coming from a place of trying to do what's best for the town.

Mr. Friedmann said the more he works with this Council, the more he has growing respect for each individual member and for the group. He said the Council is doing really hard work right now on tough issues and he likes the way the members tackle them together. Members disagree a lot but are able to be friends and be respectful. He said he's looking forward to the work in 2023 with his fellow Councilors and hopefully Mr. Dobbs.

Ms. Peacock said even with what seems like a light Council agenda, there is so much behind-the-scenes work for every item. She said there are a lot of really controversial things, emotional things, but there are also a lot of keeping-us-together-as-a-town things. She said the town has awesome staff and thanked them and everyone who comes out and pays attention and participates.

XIII. EXECUTIVE SESSION

- A. APPLL et al v. Town of Bar Harbor**—Mr. Hochman, with second by Ms. Cough, moved to enter executive session to consult with town attorneys concerning pending litigation in APPLL et al v. Town of Bar Harbor, as permitted by 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 (via Zoom) participated in the executive session. Council returned to regular session at 10:43 p.m.

XIV. ADJOURNMENT—Mr. Hochman with second by Ms. Cough, moved to adjourn the meeting at 10:44 pm. Roll Call Vote:

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

Elizabeth N. Graves, Town Clerk