

**RECORD OF REGULAR MEETING
ELLSWORTH CITY COUNCIL**

DATE: DECEMBER 14, 2015

TIME: 7:00 PM

PLACE: ELLSWORTH CITY HALL COUNCIL CHAMBERS

**CITY COUNCIL PRESENT: BEATHEM, BLANCHETTE, CROSTHWAITE,
FORTIER, MOORE, PERKINS AND PHILLIPS.**

CITY COUNCIL ABSENT:

**KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, TAMMY MOTE,
AMANDA TUPPER, MICHAEL HANGGE, MICHAEL HARRIS, MICKI
SUMPTER, PENNY WEINSTEIN, LAWRENCE WILSON, TERI DANE, AND
MANY POLICE OFFICERS AND MEMBERS OF THE ELLSWORTH POLICE
DISPATCH.**

Call to Order.

Chairman Crosthwaite called the regular meeting of the Ellsworth City Council to order at 7:00 p.m.

Pledge of Allegiance.

All stood for the pledge of allegiance.

Rules of Order.

The meeting was conducted under Robert’s Rules of Order and other rules adopted at the November 9, 2015 Annual Organizational Meeting of the Ellsworth City Council. After being recognized by the Chairman, a person may speak not more than three (3) minutes on any one item on the agenda. In addition, the person may speak not more than two (2) minutes in rebuttal.

Adoption of minutes from the following meeting (s) of the Ellsworth City Council:

- *November 06, 2015 Special Council Meeting.*
- *November 09, 2015 Organizational Meeting.*
- *November 13, 2015 Special Council Meeting.*
- *November 16, 2015 Regular Council Meeting.*

On a motion by Phillips, seconded by Fortier, it was

RESOLVED to approve adoption of minutes from the following meetings of the Ellsworth City Council: November 06, 2015 Special Council Meeting, November 09, 2015 Organizational Meeting, November 13, 2015 Special Council Meeting, and November 16, 2015 Regular Council Meeting as presented.

A final vote was taken on the above motion with 6 members voting in favor (Beathem, Blanchette, Crosthwaite, Fortier, Perkins, and Phillips) and 1 member abstaining from the vote (Moore).

Call to Order.

Pledge of Allegiance.

Rules of Order.

Approved - Adoption of minutes from the following meetings of the Ellsworth City Council: November 06, 2015 Special Council Meeting, November 09, 2015 Organizational Meeting, November 13, 2015 Special Council Meeting, and November 16, 2015 Regular Council Meeting as presented.

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City Manager's Report.

David Cole, City Manager stated the MaineDOT held a railroad crossing public hearing on December 1, 2015. This meeting went well, Cole and representatives from the Downeast Scenic Railroad presented information. A decision from the MaineDOT is expected within a month on whether to allow a new railroad crossing. If approved this would lay the groundwork for the new entrance to the High School. The new entrance is planned to be completed in conjunction with the MaineDOT project next spring.

Cole also reminded the public that the City Council will be holding a workshop Tuesday night at 6:00 PM on the Visioning and Goal Setting Survey results. This will be a chance for the Council to absorb those results in terms of shaping the final document.

Cole will be attending Maine Municipal Review Committee's Solid Waste Consortium annual meeting from 3-5 on Wednesday. This will be a presentation on their future plans for solid waste management during the coming year. Cole will be sharing this information with the Council at a later date.

Committee Reports.

➤ *Harbor Commission:* Councilor Moore reported that most of the City Councilors were present at this meeting as it was designed to be a workshop with the Harbor Commissioners. The goal of the workshop was to work out future plans for the Harbor both short and long range. One of the top projects may be to design a dredge plan by the #4 can. During very low tides this area is impassable. David Cole, City Manager may be able to work with the Harbor Commissioners on finding a solution to this problem.

➤ *Finance Committee:* Chairman Crosthwaite explained during a recent Finance Committee meeting Representative Louis Luchini presented LD779. This is a new law increasing the number of agency liquor stores for qualifying communities of 10,000 or less with a focus on communities affected by seasonal populations and especially tourism as well as service centers. Under the new law, the Bureau of Alcoholic Beverages will conduct open agency application periods in

City Manager's Report.

Committee Reports.

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January and June of 2016. As part of the process the host community must indicate interest in having an additional agency store within their community. This process would require a letter of interest from the City to the Bureau and then any interested business would need to submit an application to the Bureau. Crosthwaite explained he is not seeking a motion at this time just a consensus of the Council whether they support a letter or not. A general positive consensus was obtained at the Committee level. As a matter of record, Crosthwaite asked Council for a consensus of preparing a letter to the Bureau supporting LD779. Hearing no opposition, Crosthwaite stated they would move forward with providing a letter to the Bureau. David Cole, City Manager stated the letter from the City would indicate the need for a new agency store but it would not indicate a preference for any particular owner or private property. That process would be handled during January and June by the State.

Citizens' Comments.

Chairman Crosthwaite allowed citizens' comments on all agenda items as well as on Item #17 (Council Order #121508, Discussion and action on the appropriateness of a moratorium on land development in the Neighborhood Zone) at this time. Crosthwaite encouraged those who had not already spoken at either of the Planning Board Meetings, or the previous City Council meeting to make their presentation at this time. Repeated information will not be entertained by the Council this evening, as information has already been presented to the Council through two different Planning Board meetings, a previous City Council meeting, the Finance Committee meeting as well as many emails and letters have been received by the Council. At this time new information will be accepted or members of the public that have not already spoken in a public forum may present. When Item #17 is heard this evening the discussion and action will pretty much be limited to the Council table, the City Manager, City Staff, and the City Attorney Ed Bearor.

All the citizens that spoke this evening addressed Agenda Item #17.

James Newett, resident of Parcher Street has spoken at every meeting to this point; however, his new information to present was attachment #1, a list of 13 past backups on Parcher Street. Six of the 13 backups have occurred within the past 5 years. Five of the backups were at the proposed location of the development project.

Citizens' Comments.

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Theresa Ouellette, resident of Park Street, explained the reasons she felt a proposed moratorium should be considered in regards to this project. She cited safety concerns with this type of proposal would be the qualifying consideration for a moratorium. Ouellette recognized the number of citizens that have been getting involved with local government meetings since this project was created. Many people have started to ask questions, attend meetings and held discussions on how the City works with their neighbors. Ouellette felt if the citizens could work together with the City some minor changes and adjustments could be made to the existing Ordinances allowing for a better overall fit within the City.

Paul Ouellette, resident of Park Street, explained where the idea for a moratorium came from and how this option may be beneficial.

Marsha Causton, resident of Parcher Street, spoke on her love for the community and her concerns for how things will change in her neighborhood.

Ruth Foster, resident of State Street, spoke about her experience with similar situations over time. Foster stated the City has very capable people and by working together, hopefully there will be better results.

Todd Little-Siebold, resident of the Bayside Road, stated he is very concerned about the nature of the growth and the rate of growth within the City over the last fifteen years. He is very pleased to see that the City is considering enacting a moratorium of this type. Little-Siebold felt this request was more about the future of the community rather than citizens being concerned about one development within their backyards. He spoke in great detail about protecting neighborhoods within the community from rapid growth and maintaining the character of the neighborhoods.

Jason Barrett, Ellsworth resident, spoke as a citizen as well as in a representative capacity. He clarified the letters that have been submitted to the Planning Board and the testimony that has been provided to the Planning Board will be considered as a part of this record. Chairman Crosthwaite confirmed all the above information is part of the packet of material the Council has received in regards to the request to consider a moratorium. Barrett spoke on why a moratorium was important in this situation and how it complies with the State Statue that regulates under which

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circumstances a moratorium can be considered. He spoke on the current characteristics of the neighborhoods and the need to maintain the safety and current culture of those communities.

Dustin Updike, resident of Park Street, addressed his concerns with maintaining the current level of safety and property values within this area of the City. As he has been attending the meetings associated with this project, he has found the process to be very educational. He further addressed concerns he heard with some of the Ordinances at the various Planning Board meetings.

Lillian Frank, resident of Parcher Street, expressed her concerns with the new development being proposed and the visual change it will create in the neighborhood.

Presentation of Awards.

Harold Page, for 35 years of service with the Ellsworth Police Department.

Harold Page was present to accept his service award from Chairman Crosthwaite on behalf of the Ellsworth citizens.

Christopher Coleman, Police Chief recognized the 37 years that Page has served the badge and the gun, which includes the two years in Bangor before joining the Ellsworth Police Department.

Coleman also recognized Fred Ehrlenbach, who has been serving the City of Ellsworth for over 30 years.

Presentation of Dispatcher of the year award by Police Chief.

Christopher Coleman, Police Chief presented Leah Mattson with the award for Dispatcher of the year. He explained this award was presented after a vote was held by her peers. Coleman asked his departments to consider a person's integrity, professionalism, teamwork, work ethic, and customer service when placing their vote for a candidate for the Dispatcher of the year award. Coleman read some of

**Presentation of
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**Harold Page - 35
with the Police
Department.**

**Leah Mattson –
Dispatcher of the
year.**

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the testimonials received from Mattson's coworkers.

Presentation of Police Officer of the year award by Police Chief.

Christopher Coleman, Police Chief stated the same criteria described in determining a recipient for Dispatcher of the year award was also used when electing a recipient for Police Officer of the year award. Coleman announced Sgt. Glenn Moshier was voted by his peers to receive the Police Officer of the year award. Coleman listed some of the highlights of Moshier's career that led to his selection for this award as well as a couple of personality traits that make Moshier an excellent recipient for the award. Some of the testimonials provided by Moshier's peers were read aloud.

Chairman Crosthwaite thanked all of the members of the Police Department and the First Responders for the efforts they contribute to the career they are in, on behalf of the Council and the citizens of Ellsworth.

UNFINISHED BUSINESS

There were no items under unfinished business this month.

CONSENT AGENDA

CONSENT AGENDA: All items with an asterisk () are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member so requests, in which event, the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.*

*Council Order #121502, Request of the Deputy Treasurer/Tax Collector to accept payments on tax acquired time share units per the attached spreadsheet and to authorize the City Manager to release said properties through Municipal Quit-Claim Deeds. **

See attachment # 2 for a complete list of timeshare units sold during the previous month.

**Sgt. Glenn Moshier –
Police Officer of the
year.**

Unfinished Business.

Consent Agenda.

**Approved - Consent
agenda as presented
this evening.**

**Approved – Council
Order #121502, quit
claim timeshare
units.**

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On a motion by Fortier, seconded by Blanchette, it was unanimously

RESOLVED to approve the consent agenda as presented this evening.

NEW BUSINESS

Public hearing and action on the application for new and/or renewal for the following licenses:

Finelli's of Maine Inc., 12 Downeast Highway, for renewal of a City Class C License (Victualer/Liquor) and renewal of a State Restaurant Liquor License (Malt and Vinous).

The staff reports the premises are in compliance with required codes and ordinances necessary to issue the requested licenses.

Public hearing was opened.

There were no comments.

Public hearing was closed.

On a motion by Phillips, seconded by Beathem, it was unanimously

RESOLVED to approve the request of Finelli's of Maine Inc., 12 Downeast Highway, for renewal of a City Class C License (Victualer/Liquor) and renewal of a State Restaurant Liquor License (Malt and Vinous).

Ellsworth CI, LLC d/b/a Ellsworth Comfort Inn, 130 High Street, for renewal of a City Lodging License.

The staff reports the premises are in compliance with required codes and ordinances necessary to issue the requested licenses and that no delinquent tax or utility bills exist.

New Business.

Approved - Finelli's of Maine Inc., 12 Downeast Highway, for renewal of a City Class C License (Victualer/Liquor) and renewal of a State Restaurant Liquor License (Malt and Vinous).

Approved - Ellsworth CI, LLC d/b/a Ellsworth Comfort Inn, 130 High Street, for renewal of a City Lodging License.

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Public hearing was opened.

There were no comments.

Public hearing was closed.

On a motion by Fortier, seconded by Blanchette, it was unanimously

**RESOLVED to approve the request of Ellsworth CI, LLC d/b/a Ellsworth
Comfort Inn, 130 High Street, for renewal of a City Lodging License.**

*Adelbert Gaspar d/b/a Eastward Bowling Lanes, 25 Eastward Lane Suite 6, for
renewal of a City Class B License (victualer, liquor, and arcade) and renewal of a
State Restaurant (Class III & IV) Malt, and Vinous Liquor License.*

The staff reports the premises are in compliance with required codes and ordinances
necessary to issue the requested licenses.

Public hearing was opened.

There were no comments.

Public hearing was closed.

On a motion by Blanchette, seconded by Phillips, it was unanimously

**RESOLVED to approve the request of Adelbert Gaspar d/b/a Eastward Bowling
Lanes, 25 Eastward Lane Suite 6, for renewal of a City Class B License
(victualer, liquor, and arcade) and renewal of a State Restaurant (Class III & IV)
Malt, and Vinous Liquor License.**

*Jeff & Diane Kelly-Lokocz D/B/A 86This!, 125 Main Street, for renewal of a City
Class C License (victualer and liquor) and renewal of a State Restaurant (Class III
& IV) Malt, and Vinous Liquor License.*

The staff reports the premises are in compliance with required codes and ordinances

**Approved - Adelbert
Gaspar d/b/a
Eastward Bowling
Lanes, 25 Eastward
Lane Suite 6, for
renewal of a City
Class B License
(victualer, liquor,
and arcade) and
renewal of a State
Restaurant (Class III
& IV) Malt, and
Vinous Liquor
License.**

**Approved - Jeff &
Diane Kelly-Lokocz
D/B/A 86This!, 125
Main Street, for**

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necessary to issue the requested licenses.

Public hearing was opened.

There were no comments.

Public hearing was closed.

On a motion by Phillips, seconded by Fortier, it was unanimously

**RESOLVED to approve the request of Jeff & Diane Kelly-Lokocz D/B/A 86This!,
125 Main Street, for renewal of a City Class C License (victualer and liquor) and
renewal of a State Restaurant (Class III & IV) Malt, and Vinous Liquor License.**

*Troy A. Adams d/b/a Jaspers Restaurant & Motel, 200 High Street, for renewal of a
City Class A License (victualer, liquor, amusement and lodging) and renewal of a
State Class A Restaurant (Class A) Malt, Spirituous, and Vinous Liquor License.*

The staff reports the premises are in compliance with required codes and ordinances
necessary to issue the requested licenses.

Public hearing was opened.

There were no comments.

Public hearing was closed.

On a motion by Moore, seconded by Blanchette, it was unanimously

**RESOLVED to approve the request of Troy A. Adams d/b/a Jaspers Restaurant
& Motel, 200 High Street, for renewal of a City Class A License (victualer, liquor,
amusement and lodging) and renewal of a State Class A Restaurant (Class A)
Malt, Spirituous, and Vinous Liquor License.**

Presentation on the Senior Housing Study Findings by Bruce Mayberry Consulting.

renewal of a City
Class C License
(victualer and liquor)
and renewal of a
State Restaurant
(Class III & IV)
Malt, and Vinous
Liquor License.

Approved - Troy A.
Adams d/b/a Jaspers
Restaurant & Motel,
200 High Street, for
renewal of a City
Class A License
(victualer, liquor,
amusement and
lodging) and renewal
of a State Class A
Restaurant (Class A)
Malt, Spirituous, and
Vinous Liquor
License.

This item was a

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Michele Gagnon, City Planner thanked the members of the Committee prior to the presentation beginning. Four members were present at the meeting this evening (Ruth Foster, Audrey Tunney, Deb Chalmers, and Jo Cooper) also on the Committee were Terry Sargent, Councilors Crosthwaite and Moore, Sarah Sherwood, and Rebecca Sinford. See attachment #3, for a complete copy of the power point presentation. Attachment #3A contains an electronic copy of the "Housing Opportunities for the Age 55 & Older Markets: Ellsworth Maine". A hard copy of the report will be kept in the December 14, 2015 meeting folder as well as in the vault located in the City Clerk's Department. Bruce Mayberry, representing BCM Planning LLC stated he initially worked on this type of study 11 years ago for the City of Ellsworth within the Work Force Housing Study. Tonight he will be discussing the age 55 and older market in regards to housing needs and expectations. He introduced the Consulting Team as being himself and Pan Atlantic Research, Inc. of Portland Maine. Pan Atlantic Research, Inc served as a sub-consultant to assist with the regional housing survey. A key aspect of this survey was the larger than expected return on the survey. 800 surveys were returned with the same number of surveys being returned inside and outside of the City, capturing the regional housing desires as well. Gaps within the local inventory of senior oriented housing units were identified through this process. Market products were identified as desirable; however, missing from this area. It was clear through the survey that over time a greater share of seniors will be attracted to Ellsworth as the need for services increases such as transportation and socialization, personal care services and home adaptation. Several growth projections were provided in regards to different levels of the aging public. The inventory gaps were described as products that are currently available to align with the needs and desires of the demographics compared to the products that are desired, however not available yet. Mayberry described different sections of the survey in regards to how the different options were ranked within level of interests and priorities. David Cole, City Manager asked Mayberry if anything in particular surprised him within the results. Mayberry was surprised by how strong the component was within senior households in the 65 and over category with regards to incomes within the \$50,000 - \$75,000 range. It maybe a little more difficult to attract seniors in the \$100,000 + income level market. He was surprised to find Hancock County had that high of an income level among the senior households. He was also intrigued by the appearance of having a regional identity as well as a city identity, which is somewhat unusual. A lot of the information found within the

**presentation only, no
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survey could be used by developers located throughout the State. This would not be a substitute for a market study; however, a majority of the information could be used in conjunction with that study. Developers will still need to conduct a financial feasibility analysis as well. This is the first survey that Mayberry was aware of that has gone to this extent in regards to product preference.

Chairman Crosthwaite thanked on behalf of the Council, the members of the Housing Study Committee for a well organized and successful project. He thanked Mayberry for putting all the results together and presenting the information to the Council as well as for the interim reports as the project moved along.

Gagnon stated the survey results will be available on the City website. Printed copies will be available at the Ellsworth Public Library.

This item was a presentation only, no Council action was required.

Council Order #121503, Request of the Deputy Treasurer/Tax Collector to accept the donation of land located on the Happytown Road (Map 099 Lot 019-003-000) from the current owners Thomas E. Gross and Rhona W. Gross.

Amanda Tupper, Deputy Treasurer/Tax Collector explained the City was contacted by landowners Thomas and Rhona Gross to inquire if the City would be willing to accept their land as a gift. See attachment #4 for a letter of intent from the landowners including a map displaying the location of the property. The property is located on the Happytown Road and does not contain any structures. The land was originally purchased for the placement of a camp, at this time there is not an interest in keeping the parcel of land by the family. The landowners would like the City to accept the land with the intent of being able to benefit from the land. Tupper checked the status of taxes; taxes have been paid in full including the March installment of the FY 2016 tax obligation. Dwight Tilton, Code Enforcement Officer also surveyed the land and reported this to be a “great deal”. This parcel is just over 5 acres. Councilor Fortier inquired if there was direct access to this property. It was confirmed that the property is located directly on the Happytown Road; it is not a back lot. There are restrictions within the deed as mandated by the covenants of the subdivision, as identified by Tilton.

**Approved - Council
Order #121503,
Request of the
Deputy
Treasurer/Tax
Collector to accept
the gifted land on the
Happytown Road
(Map 099 Lot 019-
003-000) from
Thomas E. Gross and
Rhona W. Gross.**

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On a motion by Phillips, seconded by Beathem, it was unanimously

**RESOLVED to approve Council Order #121503, Request of the Deputy
Treasurer/Tax Collector to accept the gifted land on the Happytown Road (Map
099 Lot 019-003-000) from Thomas E. Gross and Rhona W. Gross.**

Councilor Fortier mentioned since this parcel was accepted as a donation it will not be governed under the tax acquired ordinance, the Council has no restrictions on what they do with the property.

*Council Order #121504, Request of the Finance Director for transfer of the
Defendants in Rem (criminal forfeiture Doc. No. CR-14-1306) to the City of
Ellsworth and to allow the Finance Director to deposit these monies into the Police
Forfeiture Reserve Account upon receipt of the funds.*

Tammy Mote, Finance Director stated a recent drug case resulted in the arrest and conviction of a man who had cash in his possession when the apprehension took place. This money was turned over to the court system as part of the case. The Assistant Attorney General, Patrick Larson, who is prosecuting the case, has proposed that Ellsworth receive \$2,922.90 from the forfeiture. State law requires that before any forfeitable item can be transferred to the municipality, the legislative body must publicly vote to accept the items. This council order would accept the funds and allow the Finance Director to deposit the monies into the Police Forfeiture Reserve Account once those funds are received. See attachment #5 for the letter of award from the Office of the Attorney General and the Court Order from the Court awarding the Defendant In Rem (\$2,922.90).

On a motion by Fortier, seconded by Blanchette, it was unanimously

**RESOLVED to approve Council Order #121504, Request of the Finance
Director for transfer of the Defendants in Rem (criminal forfeiture Doc. No. CR-
14-1306)in the case of State of Maine vs. David Spofford pursuant to 15 M.R.S.A
Section 5822 (4)(A) and Section 5824 (3) to the City of Ellsworth, and to allow the
Finance Director to deposit these monies into the Police Forfeiture Reserve
Account upon receipt of the funds.**

**Approved - Council
Order #121504,
Request of the
Finance Director for
transfer of the
Defendants in Rem
(criminal forfeiture
Doc. No. CR-14-
1306)in the case of
State of Maine vs.
David Spofford
pursuant to 15
M.R.S.A Section
5822 (4)(A) and
Section 5824 (3) to
the City of Ellsworth,
and to allow the
Finance Director to
deposit these monies
into the Police
Forfeiture Reserve
Account upon receipt
of the funds.**

**RECORD OF REGULAR MEETING
ELLSWORTH CITY COUNCIL**

DATE: DECEMBER 14, 2015

TIME: 7:00 PM

PLACE: ELLSWORTH CITY HALL COUNCIL CHAMBERS

**CITY COUNCIL PRESENT: BEATHEM, BLANCHETTE, CROSTHWAITE,
FORTIER, MOORE, PERKINS AND PHILLIPS.**

CITY COUNCIL ABSENT:

**KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, TAMMY MOTE,
AMANDA TUPPER, MICHAEL HANGGE, MICHAEL HARRIS, MICKI
SUMPTER, PENNY WEINSTEIN, LAWRENCE WILSON, TERI DANE, AND
MANY POLICE OFFICERS AND MEMBERS OF THE ELLSWORTH POLICE
DISPATCH.**

Council Order #121505, Request of the Wastewater Treatment Superintendent to approve a service contract for the variable frequency drives and controls with New Horizons.

Michael Harris, Wastewater Treatment Superintendent is requesting a contract proposal that has been submitted by Horizon Solutions be approved this evening. This contract will provide service and warranty on equipment located at the new plant. Harris explained now that the plant is three years old a majority of equipment located on the site is no longer covered under warranty. It is critical that the electronic elements located at the plant are kept in working order and to be assured those components are reliable in the future. At this time the necessary knowledge and expertise to deal with failures and break downs of the electronic components is not available in house. Harris explained the contract found within attachment #6, provides two critical features to the City. The first would warranty every drive located at the Treatment Plant as well as at all of the pump stations, including some of the programmable logic controllers (PLC), and other necessary controllers. The second benefit to the contract would be providing support with a knowledgeable technician at the time of a failure. This support may help Harris fix the problem himself without incurring additional expenses. Two representatives were present from Horizon Solutions to answer any questions or concerns from the Council. Horizon Solutions is an exclusive distributor for Rockwell Automation. A technical description was provided on the relationship between Horizon Solutions and Rockwell Automation and how that affects the contract with the City of Ellsworth. Harris gave an example of a failure last year that cost the City a significant amount of money to fix, had the City been under this type of contract that replacement would have been covered. Harris provided a background on how many drives/controllers have already failed during the first three years of operation at the new Treatment Plant and projected the failure rate as the plant continues to age, in response to a question asked by Councilor Moore. Harris provided an explanation on how much money is projected to be saved with this \$13,000 a year contract, in response to Moore's question. Based on last year's experience the City would have saved \$10,000 and this year the \$800 plus labor expense would have been covered. As part of this contract, critical spare parts will be kept on site. The City will not be billed for those until they are used. Following an extensive explanation on potential costs associated with different components of the plant failing or being struck by lightning; it was determined the contract will provide a fixed cost over a period of

Approved - Council Order #121505, Request of the Wastewater Treatment Superintendent to approve the warranty and service contract (attachment #6) proposal by New Horizons Solutions in the amount of \$1,077.00 per month to be funded from the Professional Services Account. The term of the contract will be 60 months, unless the City decides to opt out sooner.

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KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, TAMMY MOTE, AMANDA TUPPER, MICHAEL HANGGE, MICHAEL HARRIS, MICKI SUMPTER, PENNY WEINSTEIN, LAWRENCE WILSON, TERI DANE, AND MANY POLICE OFFICERS AND MEMBERS OF THE ELLSWORTH POLICE DISPATCH.

time versus an up and down of unexpected costs. An explanation was provided on the live support aspect provided under the contract. Harris explained the City would not be paying a lump sum per year for the contract, the cost would be paid on a per month installment basis out of his professional services account. Councilor Fortier excused himself from the item as he worked with the grandfather of Rockwell Automation for 35 years. He confirmed this company is the go to for equipment in motor controls and motor accessories. His experience with Horizon Solutions is they stand behind what they say and do. Fortier feels this is an insurance policy for the City to ensure the expenses are fixed and steady each year rather than unpredictable and excessive some years. At least once a year an extensive inspection is conducted of the Treatment Plant by an engineer.

On a motion by Phillips, seconded by Moore, it was

RESOLVED to approve Council Order #121505, Request of the Wastewater Treatment Superintendent to approve the warranty and service contract (attachment #6) proposal by New Horizons Solutions in the amount of \$1,077.00 per month to be funded from the Professional Services Account. The term of the contract will be 60 months, unless the City decides to opt out sooner.

A friendly amendment was made to the motion that the term of the contract will be 60 months unless the City decides to opt out sooner.

A final vote was taken with 6 members voting in favor (Beatham, Blanchette, Crosthwaite, Moore, Perkins, and Phillips) and 1 member abstaining from the vote (Fortier).

Council Order #121506, Request of the City Planner and the Public Works Director to extend the stormwater inventory and mapping contract with the Maine Department of Agriculture, Conservation, and Forestry.

Michele Gagnon, City Planner stated her request tonight was for the Council to extend the Maine Coastal Program Coastal Community Grant, and to accept a \$15,000 grant from the State of Maine and in turn match that grant with \$15,000. The \$15,000 in matching funds is recommended to be funded from the City's Local Roads Capital Improvement account. In October 2014, the City hired Sebago Tech

Approved - Council Order #121506, the extension of the Maine Coastal Program Coastal Community grant, accept the additional \$15,000 grant and match it with \$15,000

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CITY COUNCIL ABSENT:

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DISPATCH.**

to conduct a stormwater inventory and mapping of piped area in the amount of \$47,000. \$25,000 was funded from the Maine Coastal Program Coastal Community grant and \$23,000 was matched from the City. This funding allowed Sebago Tech to survey 406 structures and 54 culverts. Part of the project involved compiling archived road construction and stormwater plans to build the most up-to-date field maps. During this process Sebago Tech developed the GIS data model to be used in the field for data collection. After the data was collected, they met with the City Planning Department and Public Works Department to review and finalize the database format and the attributes to be collected. At least another 230 structures and 25 culverts remain to be captured. The State offered the City an additional \$15,000 to keep the project active into the spring of 2016. The additional funding would require a \$15,000 match by the City. The \$30,000 will be split with \$17,600 being used to inventory the remaining 230 structures, or \$73 per structure and 25 culverts which is \$32 per culvert. \$7,800 will be designated for the GIS database completion and training for Janna. \$4,600 will cover management and reimbursable expenses. See attachment #7 for the complete request including the updated proposal for the Stormwater Infrastructure Inventory and Mapping project. Gagnon explained this project originally started in an effort to capture the institutional knowledge of the Public Works Director by documenting it in a written format. It is also important to understand the City's stormwater management facilities, in the same way that the City looks at the water, sewer and the road system. These infrastructures are equally as important for urban development to take place. The problem with stormwater is the focus is only on it during or immediately after flooding takes place. Stormwater affects the water quality and flooding has a negative impact on economic productivity. Another important reason to understand the City's stormwater facilities is due to the Clean Water Act. This is the first step in developing a comprehensive inspection program of the stormwater facilities located throughout the City. This work also compliments the 2014 survey of 85 stream crossings throughout the City by the Nature Conservancy. The findings from the extension of the Maine Coastal Program Coastal Community grant will help the City figure out the best long term solution for Cards Brook. Finally, this project will lead into developing an asset management program. John Giles gave an overview of the project up to this point. At this time approximately half of the stormwater system has been mapped. Giles explained the phases of the map as attached to the minutes in attachment #7. The updated proposal being considered this evening was described in finer detail as well as how the findings

**from the City's Local
Roads Capital
Improvement
account.**

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CITY COUNCIL ABSENT:

**KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, TAMMY MOTE,
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DISPATCH.**

from the survey work will be beneficial to development in the future. Councilor Blanchette inquired about the actual number of remaining structures and how the estimate could affect the \$30,000 figure. Giles explained an estimate was used on the number of structures and the cost is based on \$73 per unit. At that cost they can map 230 structures and approximately 25 culverts. The end result may be more culverts and fewer structures or vice versa. If fewer structures are located that will leave a little more funding to be applied to a possible phase 3 area as notated on the map. Chairman Crosthwaite confirmed the matching funds would come from the Local Roads Capital Improvement account. He further noted there was a request to consider an additional \$20,000 within the upcoming budget. Gagnon explained in an effort to fully disclose all the costs associated with this project, she is presenting the potential need for an additional \$20,000 at a later date. That funding would be used for incorporating piping data from as-built plans and modeling the capacity of stormwater infrastructures. The current contract expires on December 31, 2015. Matching funds will not be requested on the \$20,000 portion of the project at this time; however, if a grant becomes available for this portion Gagnon will apply for those funds. Councilor Perkins asked for a further explanation on the different phases as represented on the map, the different phases were explained. Councilor Beatham inquired if the area located near the hospital would be mapped based on existing or planned structures. Gagnon explained the Carlisle Street area would be based on plans from Woodard and Curran. After a bit of discussion it was decided that area would be based on what is in the ground currently, therefore existing. Beatham questioned once this portion is completed, what plans are being made to ensure the information is maintained and all the changes are added to the plans. Currently, the City's GIS person will be trained to enter the new information as it is provided through as-built plans. The Ordinance currently allows the Planning Department to request as-built plans particularly in regards to stormwater and then the data will be entered into the database. The same process will be utilized for road construction projects handled by the Public Works Department. Beatham would like assurance there is strong enough language within the Ordinance to ensure the as-built plans are provided with every project. Gagnon stated this topic has been discussed and the request will be made mandatory rather than just a staff request. The level of information provided on projects will be equivalent to survey grade. There was a lengthy discussion on the requirements of the as-built plans to ensure they are not just field plans with notes. The City already owns the necessary software; however, eventually the City would like to add an asset module. There

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will be an additional cost for this module. Blanchette inquired if it was possible to require an inspection of the final project to ensure it was built to the standard required throughout the process. He felt this inspection would verify the information received by the City. Larry Wilson, Public Works Director explained as-built plans as they relate to different projects. Wilson has been providing electronic copies of the as-built plans as they are received to the Planning Department. He receives paper copies of the plans as well. At this time the plans are being requested and the information is being entered into the database by the Planning Department.

On a motion by Moore, seconded by Fortier, it was

RESOLVED to approve Council Order #121506, the extension of the Maine Coastal Program Coastal Community grant, accept the additional \$15,000 grant and match it with \$15,000 from the City's Local Roads Capital Improvement account.

Before a vote was taken on the above motion, Beathem inquired what the balance was in the City's Local Roads Capital Improvement account. Tammy Mote, Finance Director stated it was \$104,000.

A final vote was taken on the above motion with 6 members voting in favor (Blanchette, Crosthwaite, Fortier, Moore, Perkins, and Phillips) and 1 member voting in opposition (Beathem).

Council Order #121507, Request of the City Planner and the Public Works Director to accept the Shore Road Stormwater grant.

Michele Gagnon, City Planner explained in August, the City received a grant in the amount of \$89,354 to replace the Davis Brook culvert at the Shore Road from the Maine Department of Environmental Protection (MDEP). Gagnon is requesting the City match this grant in the amount of \$9,700. The matching funds would be used to hire Andrew McCullough for design engineering services and permitting. See attachment #8 for the complete request, State of Maine Department of Environmental Protection Agreement to Purchase Services, Specifications of work to be performed and Andrew McCullough's cost estimate for engineering services.

Approved - Council Order #121507, to accept the MDEP \$89,354 grant; 2) the hiring of Andrew McCullough in the amount of \$9,700 for engineering and permitting to be funded from the Local Roads Capital

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CITY COUNCIL ABSENT:

**KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, TAMMY MOTE,
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DISPATCH.**

The complete request this evening is for the Council to accept the grant, approve hiring Andrew McCullough, and to allow the City Manager to sign the contract between MDEP and the City. Davis Brook runs from an unnamed pond through the Whitney Field and empties into Leonard Lake. It discharges at the Shore Road, is approximately 0.75 mile in length and is fragmented by three crossings. The first crossing is upstream at the railroad crossing, this has a 28 sf. concrete culvert adequately sized and at grade. The middle crossing is located at Route 1A/State Street this has a 12 sf. perched and undersized culvert that is scheduled to be replaced beginning in the summer of 2016 in conjunction with the Route 1A project. The culvert will be replaced with a 32 sf. pre-cast concrete culvert at grade with an open bottom. The increase in culvert size will allow water to move much quicker, the receiving culvert is located on the Shore Road. Currently, that culvert is an old granite 4.5 sf. box culvert. The proposal calls for replacing this culvert with a 40 sf. open pre-cast concrete culvert. Currently, the State Street and Shore Road crossing are pinch points and disrupt the natural flow of the water. Gagnon explained the plan is to raise the road bed out of the 100-year floodplain. Although this considerable enlargement of the crossing and placement of the road will not avoid all flooding, it will substantially decrease the chances of flooding by allowing more water to pass during high flows. The goal is for less damage to be sustained during large storms. Gagnon discussed the proposed timeline for this project to ensure the project could be completed during the July 15 to October 1, 2016 construction window mandated by the MDEP. The importance of coordinating projects was discussed in order to minimize traffic congestion and delays on Route 1A/State Street as well as the impact on the Shore Road while it is being used as a bypass for State Street.

Al Eggleston, property owner at 187 Shore Road explained the granite culvert discussed earlier is located on his property. He was concerned about the effects on his property once the larger culvert is installed.

Larry Wilson, Public Works Director explained he is aware of flooding during heavy rainstorms on the Eggleston property. The box culvert is very small, beginning to collapse and will need to be replaced soon; Wilson felt this grant provided an excellent opportunity to replace it. The goal is to make the water more passable on the Shore Road. When the State increases the size of the culvert on State Street the culvert on Shore Road will need to be increased to handle the

**Improvement
account; and 3) to
allow the City
Manager to sign the
contract between the
MDEP and the City.**

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additional water flow. Wilson confirmed he has not contacted Eggleston yet, as this project is just in the preliminary stages. Eventually, this culvert and a few other items will be replaced to help reduce the number of times the Shore Road experiences flooding. The road has been closed twice this year due to flash flooding. The current is strong in this area causing a public safety concern for vehicles passing through this road while it is flooded. This project has not been engineered yet, the request is to accept the grant and approve local matching funds for the engineering portion. The matching funds would be allocated from the Local Roads Capital Improvement account. Councilor Blanchette inquired if the engineering consultations would look into the effect on the Eggleston property. Gagnon stated as past practice properties are considered throughout the project for impact. This project is just in the preliminary stages, construction easements must be in place before any work is completed on private property. The purpose of increasing the size of the culvert is to decrease the impact of flooding. The culvert will be placed under the road that is owned by the City. This road project will be handled like all other road projects completed by the City. Blanchette would be more comfortable if the engineering work considered the impact if any on the neighboring properties throughout the project. David Cole, City Manager questioned whether the DEP required a public hearing as part of the process, similar to the requirements of DOT. Gagnon was not aware of a required public hearing. Members of the public are welcome to meet with City staff and the engineer to fully understand the parameters of the project and the impact of the project on their property. Gagnon stated she has noted the concerns shared by Eggleston and she will relay those to the engineer who will be in contact with him.

Betsy Eggleston, property owner of 187 Shore Road, explained the floods during the 26 years they have lived at the property have been quick causing them to be an island for a very short period of time. She stated they have started coming to meetings similar to this one because of the impact of development in Ellsworth. She is hopeful that the neighbors of any project within their neighborhood would be notified ahead of time.

Chairman Crosthwaite inquired from the City Attorney if it was satisfactory to approve the motion as written. Ed Bearor, City Attorney stated he felt all three requests before the Council this evening could be included within one motion. Further, nothing within the motion authorizes the taking or disturbance of private

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property. He understands the project to be within the existing public right-of-way. If that is not the case, there is nothing within the motion this evening authorizing the taking of private property. A request would have to be scheduled at a later date with the Council to approve an easement if necessary over private property.

On a motion by Fortier, seconded by Moore, it was

RESOLVED to approve Council Order #121507, to accept the MDEP \$89,354 grant; 2) the hiring of Andrew McCullough in the amount of \$9,700 for engineering and permitting to be funded from the Local Roads Capital Improvement account; and 3) to allow the City Manager to sign the contract between the MDEP and the City.

Before a vote was taken Councilor Beatham questioned whether it was a box culvert under the railroad on the upside of the stream. He stated there is a 24" culvert below the walking path. Gagnon stated there is one culvert that goes under both the railroad and walking path. Beatham stated it is not an open box culvert under the railroad. Beatham voiced a concern regarding having the proper information available with this request and the stormwater item. Fortier stated the report states it is a concrete culvert crossing, it does not say it is a box culvert; Beatham stated it is neither one it is a plastic culvert.

A final vote was taken on the above motion with all members voting unanimously in favor.

Council Order #121508, Discussion and action on the appropriateness of a moratorium on land development in the Neighborhood Zone. (Sponsored by Councilor Phillips)

Councilor Phillips stated Mr. Newett had addressed the Finance Committee with valid points concerning a moratorium on land development in the neighborhood zone. Phillips felt it would be appropriate for the topic to be discussed in a public forum, so he agreed to sponsor this item. In response to an observation by Newett that the Zoning Ordinance had been rushed through, Phillips noted reviewing emails from the Zoning Update Committee dating from December 15, 2005 through 2012 when the Ordinance was finally approved. That project took seven years from the

Approved - Council Order #121508, the City Council does not go further toward a moratorium on land development in the Neighborhood Zone.

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beginning to the end, with countless meetings held in the Council Chambers on this topic. There were numerous public meetings held between the Planning Board and the City Council and citizens were asked to attend those. This document was not rushed through with many interesting debates between City staff, members of the Zoning Update Committee, and Councilors. This document is a work in progress; the end result was a fair and honest document. Councilor Moore felt it was important to reiterate the document is a work in progress and that periodically the document should be reviewed. Ed Bearor, City Attorney advised the Council on the procedure they would be deciding to embark on or not. He further advised the Council in regards to the law that would guide any decision the Council would ultimately make on the moratorium question. Although, public comment was allowed this hearing was not specifically advertised as a public hearing. A moratorium ordinance would be an amendment to the existing Zoning Ordinance or Land Development Code. As such a formal public hearing would be required, noticed a certain number of days to qualify. Final action could not be taken this evening; a consensus could be gathered on whether to explore this topic further or not. The only information before the Council this evening was a concept; a formal document has not been received by the Council in regards to this topic. Bearor reviewed the State Statute (Title 30-A, Section 4356) that would govern action this evening and the criteria that would need to be met to qualify for a moratorium. See attachment #9 for a complete packet of information defining Moratoria, providing Maine State Law on Moratoria and reviewing the Land Use Ordinance, Comprehensive Plan, Unified Development Ordinance, and the consistency between the Unified Development Ordinance and the Comprehensive Plan. Chairman Crosthwaite questioned whether a land use ordinance review should come to the Council through recommendation of the Planning Board since Ellsworth has one. Changes in that ordinance traditionally have been discussed at the Planning Board level and then recommended to Council for final approval. Bearor stated the City ordinance has a provision within in it directing the process to begin with the Planning Board entertaining a proposal or being asked by the Council to investigate a proposed change and then return a recommendation to the Council at which time the Council has the legislative authority to enact those changes. The State Legislature has determined that in an instance of a moratorium the above process can be short circuited with a direct appeal to the Council and action on the part of the Council to call a time out which is also known as a moratorium. This is a unique process; however, is guided by some general

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principles located in the State Statues. Councilor Blanchette inquired if a moratorium on this particular project would affect the entire City. Bearor stated it should not affect the whole City; the Council would want to make the moratorium as broad, yet as narrow as necessary to accomplish the end. Bearor summarized the issue as he understood it. He further described language that could be utilized to create a moratorium to meet the needs of this particular request; however, it would affect any areas meeting the standards set out in the proposed moratorium. It could not be specifically written for this particular project, the moratorium would need to remain broad enough to be fair to everyone else located within this one zone. Bearor explained the impact on the pending application if a moratorium were to be created at this point as well as an explanation was provided on what it means to have a pending application before the Planning Board. Moratorium ordinances can be written to be retroactive, if designed that way from the start. There was a discussion on how an approved project with the Planning Board would be affected by a moratorium ordinance. Bearor felt once a developer has a spade in the ground and earth is being turned over they would have vested rights, at this point it would be beyond the Council's control. There was a discussion on potential legal exposure to the City if it enacted a change to an ordinance that would not allow this project to move forward after approval was granted by the Planning Board. Councilor Beathem stated the Zoning Ordinance currently in place within the Neighborhood Zone is more restrictive now than it was when it was zoned R1. He felt there is enough latitude within the Ordinances to allow the Planning Board to carry out what is required. There are latitudes in place to protect the community, the neighborhood, and the City. He did not feel it was his intent to take that responsibility away from the Planning Board. He would not support a moratorium. Councilor Perkins expressed the reasons behind her interest in being elected to the City Council as they pertained to the concerns addressed this evening. Perkins would like to see the City be more progressive in the ways the Council and City engage citizens in the decision making process. Blanchette stated the R1 Zone allowed this type of project, hearings were held on the change in zone, and those changes were made several years ago. Blanchette stated he could not support a moratorium, he would rather see the project move completely through the Planning Board process. Moore would like confirmation that property owners will not have their property made physically worse while construction is taking place. It is his expectation that great care will be taken to ensure the approval of a project on one parcel of land will not cause damage to be inflicted on another property. Jason

**RECORD OF REGULAR MEETING
ELLSWORTH CITY COUNCIL**

DATE: DECEMBER 14, 2015

TIME: 7:00 PM

PLACE: ELLSWORTH CITY HALL COUNCIL CHAMBERS

**CITY COUNCIL PRESENT: BEATHEM, BLANCHETTE, CROSTHWAITE,
FORTIER, MOORE, PERKINS AND PHILLIPS.**

CITY COUNCIL ABSENT:

**KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, TAMMY MOTE,
AMANDA TUPPER, MICHAEL HANGGE, MICHAEL HARRIS, MICKI
SUMPTER, PENNY WEINSTEIN, LAWRENCE WILSON, TERI DANE, AND
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Barrett stated a moratorium will not change anything, it will just allow time to reevaluate the current ordinances. This time would allow the question of whether the Ordinances adequately allow the Planning Board to take character and fit into account. He further explained at the end of the moratorium period the Council may determine the current Ordinances do provide sufficient protections. Barrett encouraged the Council to consider allowing the citizens who have demonstrated an interest in being involved and have displayed a vested interest in this topic to be involved in the process of reviewing the ordinance by enacting a moratorium allowing time for this topic to be explored. The substance of the moratorium would not need to be decided this evening, just whether the people can be heard and involved in the process. The process would at least offer an opportunity for the citizens to become educated and gain a better understanding of how zoning is handled, the goals of zoning and comprises that must be made to have responsible zoning throughout the City.

On a motion by Beathem, seconded by Blanchette, it was

RESOLVED to approve Council Order #121508, the City Council does not go further toward a moratorium on land development in the Neighborhood Zone.

Beathem reiterated there is enough latitude within the Zoning Ordinances that the Council needs to allow the Planning Board to utilize those. If they choose to deny the project or if they choose to move forward it will have to be decided on the merit of the project, plus it needs to be based on what is best for the City, the neighborhood, and everything else. This is a challenge for the Planning Board. Perkins was of the opinion that a moratorium was probably not appropriate at this point; however, she believes engaging the public in further discussions concerning the Ordinances would be appropriate. She would gladly accept all feedback on how the City should move forward from this point and encouraged the public to stay actively involved.

A final vote was taken on the above motion with 6 members voting in favor (Beathem, Blanchette, Crosthwaite, Moore, Perkins, and Phillips) and 1 member voting in opposition (Fortier).

Fortier stated the reason he opposed the vote was because he felt this was an

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opportunity to research the topic more. He was not in favor of the moratorium. Moore stated he voted yes, with the understanding that the Council can act retroactively.

Ann Dale, resident of 75 Park Street, spoke at the Planning Board level on this topic. She feels the definition of the R1 zone has changed over the years. She felt good, responsible development does need to happen for the future. Whether through a citizens' initiative or some other avenue there needs to be a good look at what is happening.

Adjournment.

On a motion by Fortier, seconded by Beathem, it was unanimously

RESOLVED to approve adjournment at 9:55 PM.

A TRUE COPY

**ATTEST: _____
HEIDI-NOËL GRINDLE**

**Approved -
Adjournment at 9:55
PM.**