

**RECORD OF REGULAR MEETING
ELLSWORTH CITY COUNCIL**

DATE: DECEMBER 17, 2018

TIME: 7:00 PM

PLACE: ELLSWORTH CITY HALL COUNCIL CHAMBERS

**CITY COUNCIL PRESENT: BLANCHETTE, FORTIER, GRINDLE,
HAMILTON, HUDSON, MOORE, AND PHILLIPS.**

CITY COUNCIL ABSENT:

**KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, TAMMY MOTE,
GLENN MOSHIER, KATE J. GROSSMAN (FARRELL, ROSENBLATT &
RUSSELL ATTORNEYS AT LAW), DWIGHT TILTON, AND HEIDI GRINDLE.**

Call to Order.

Chairman Blanchette called the regular meeting of the Ellsworth City Council to order at 7:00 PM.

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 14, 2018 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:

- *October 15, 2018 Regular Council Meeting.*
- *November 2, 2018 Special Council Meeting.*
- *November 9, 2018 Special Council Meeting.*
- *November 14, 2018 Organizational Meeting.*
- *November 14, 2018 Special Council Meeting.*

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

RESOLVED to approve the adoption of minutes from the following meetings: October 15, 2018 Regular Council Meeting, November 2, 2018 Special Council Meeting, November 9, 2018 Special Council Meeting, November 14, 2018 Organizational Meeting, and November 14, 2018 Special Council Meeting as presented.

A vote was taken on the above motion with 5 members voting in favor (Blanchette, Grindle, Hamilton, Hudson, and Moore) and 2 members

Call to Order.

Pledge of Allegiance.

Rules of Order.

Approved - Adoption of minutes from the following meetings: October 15, 2018 Regular Council Meeting, November 2, 2018 Special Council Meeting, November 9, 2018 Special Council Meeting, November 14, 2018 Organizational Meeting, and November 14, 2018 Special Council Meeting as presented.

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abstaining from the vote (Fortier and Phillips). Fortier and Phillips abstained as they were absent for 2 or 3 of the listed meetings.

City Manager's Report.

David Cole, City Manager reminded the public that City Hall will be closed at noon on Monday, December 24, 2018 going into Christmas Eve and closed all day on December 25, 2018 in recognition of Christmas. City Hall will be closed on New Year's Day. Winter Carnival will be held on Saturday, February 9, 2018. There will be more details about this event at next month's meeting. Cole announced the City of Ellsworth will be featured in a very nice article containing beautiful pictures in the next Maine Magazine. This is their economic development and entrepreneurship edition, including a ten page spread on Ellsworth. The City received an advanced copy; however, the magazine should be coming out very soon. The article highlights the City's partnership with Jackson Laboratory, small businesses including Fog Town Brewery among others and is a very nice promotional piece for the City. Cole noted Maine Biz Magazine will be going on the road in 2019 to visit 6 cities; Ellsworth has been selected among the applicants to be visited. This will give Ellsworth a lot of coverage at that time which is a very positive thing for the community. The only communities chosen North of Waterville were Millinocket and Ellsworth. Portland, Bath and the Kennebunks were also successful applicants for site visits. Cole explained there was recently an article in the Ellsworth American concerning a police officer to be placed at Maine Coast Memorial Hospital. In the body of the story it did say this concept was subject to City Council approval. Cole noted for the public's benefit these discussions between the hospital and the Police Chief are very preliminary. No consensus has been reached yet even at a staff level and right now Ellsworth like other communities through-out the State are having a difficult time finding police officers. There is a shortage and the Department is currently down a few positions. Even if this was something the Chief and the City Council wanted to pursue it would be difficult to find officers to fill the core patrol positions. Cole pointed out there is merit to partnering with the hospital but there are many other challenges as well.

Committee Reports.

- *Harbor Commission:* Councilor Moore stated the Commission met on the second Wednesday of December. Currently, not much is happening at the Harbor.

City Manager's Report.

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The new ice eaters were tested, there was not much ice at the time; however, they worked well. The Commissioners are preparing a budget and in February there will be a workshop with the City Council. This workshop will be held on February 4, 2019.

Recreation Commission: Councilor Grindle noted the Commission met on December 5 with Shane Lowell of the Downeast Family YMCA and a number of other people. The Commission received the traveling basketball schedule which is underway. The ice rink has been setup and opened on December 13, 2018 at the Knowlton Park. The goal this year is to offer some designated times for skating and hockey instruction. The Commission also discussed movie nights, the one scheduled for November was cancelled due to snow; they will try to coordinate a makeup night with the PTF because they offer a similar event. The goal is to not reschedule for a date already taken by the PTF. Winter Carnival was discussed with the dates being February 9 and 10. There will be another meeting to finalize the plans; currently there are a number of events being considered. The next meeting is scheduled for January 2, 2019. There will be updates concerning the ice rink on the Ellsworth Ice Rink Facebook page. Councilor Hudson inquired if the YMCA will be charging for the hockey and skating instruction. This will be a free service. Councilor Fortier noted Lowell was being added as an administrator so that he could update the Ellsworth Ice Rink Facebook page; Tammy Mote, Deputy City Manager confirmed this has been resolved.

Citizens' Comments.

Gordon Workman, resident of Ellsworth updated the Council on actions he had to take to try and alleviate a problem his neighbor caused. He finished a trench and put in drainage which is a temporary solution. This will definitely not last; it will only stop the problem for a while. Workman quoted Maine Revised Statutes Chapter 17 Crimes and Chapter 91 Nuisances; those pertain to unreasonable use of land that results in altered flow of surface water that unreasonably injures another land or that unreasonably interferes with the reasonable use of another land is a nuisance. Workman cited language under the City of Ellsworth Property Maintenance Ordinance. He read the portion of the Ordinance that related to stormwater discharge. Workman read into the record that drainage of roofs and paved areas, yards and courts and other open areas on premises shall not be discharged in a manner that creates a public nuisance. Roof water shall not be discharged in a manner that creates a public nuisance this is stated in 303.2, section

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303, and section 506.1. This information can be found in the City's Maintenance Ordinance. Workman stated this is an obvious alteration of surface water so he would like to have something done about it. He has requested this be fixed for a while and it has not been taken care of. Workman also addressed the rules of the subdivision and covenants in regards to any substructures or garages that are to be built in the subdivision are supposed to have a 40' setback from all lines. His property is not part of the subdivision; however, his neighbor's garage is 20' from the property line. Workman may pursue that violation. All of the drainage from his neighbor's roofs flow into Workman's backyard.

Rebecca Maddocks-Wilbur, resident of Ellsworth Falls Maine addressed a concern with the citizen's comments portion of the meeting. Her understanding is a citizen can speak about anything that concerns them. However, they receive no feedback and so it is not an interactive process, there is no expectation of any sort of action. If a citizen decides and can compel the City Council to address an issue thus putting it on the agenda one would expect it would be at that point someone could speak freely about that issue that they are trying to have addressed. Maddocks-Wilbur's concern is that moments before this meeting was called to order she was told as was her associates that they would not be able to present information that had been presented before, only a couple of paragraphs that seem to be new information. Maddocks-Wilbur raised the issue with Chairman Blanchette when he delivered that message that there are two Councilors which were not present because they were not on the Council. Her concern is the item is on the agenda, they have been restrained from being able to speak freely about it, and she is fairly certain the City Council does not itself have a restriction on what they can say nor would their attorney. She is concerned even though they followed the process for months that they will not be able to represent themselves adequately for the arguments which have undoubtedly been prepared in full. She does not feel that is a fair maneuver to deliver that message moments before a meeting is called to order that they spent a lot of time preparing for.

Presentation of Awards.

There were no presentations of awards this month.

UNFINISHED BUSINESS

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Council Order #111810, Consideration of the City's options in conjunction with the Ticonic Property. (Delayed action at the November 19, 2018 Regular Council Meeting)

Chairman Blanchette explained this is a continuation of the item listed; this is not a new item tonight. He asked that any information that has already been received by the City Council, information already stated by the parties, history on this item and their opinions has been heard over the last few meetings; therefore Blanchette did not want that type of information repeated this evening. Anyone who would like to speak will come to the podium and be recognized by the Chairman first; this process will allow anyone wishing to speak for the three minute maximum time limit the opportunity. There will be no speaking from the floor. Blanchette noted there has been an opinion provided by an attorney not associated with Webber Oil; see attachment #1 for the legal opinion from Kate Grossman of Farrell, Rosenblatt & Russell Attorneys at Law. David Cole, City Manager introduced Kate Grossman from Farrell, Rosenblatt & Russell who was present to represent the City tonight, answer any questions relating to the opinion that was submitted as part of the packet prior to the meeting, or provide any further guidance the Council may require in this matter. Cole noted in his opinion, the advice is similar to that previously received from Ed Bearor (Rudman and Winchell) although there are some distinctions. Grossman stated she has reviewed the opinion provided last month by Ed Bearor. She then reviewed the history of the documents, based upon that information created her own analysis. One point of disagreement she had with the Rudman and Winchell opinion was regarding the zoning Board of Appeals jurisdiction to hear the appeal of the CEO's grant of the demolition permit. Bearor came to the conclusion that because there was not a specific provision of the Ordinance sited in the appeal that as a preliminary threshold matter the Board of Appeals would not have the jurisdiction to hear the appeal at all. Grossman's reading of the appeal is that the Ordinance says the Board of Appeals has the jurisdiction to hear appeals that allege an error in the administration of the Ordinance. In her opinion, if someone claims a permit should not have been granted, as in this case the allegation/appeal can be read that the property owner does not have the right, title, or interest to perform the land use activity they are proposing. That would be an allegation of an error in the administration of the Ordinance. This reasoning led to her opinion that the Board of Appeals would have the jurisdiction to hear the appeal. This is not the same as saying the appeal should be granted but merely the Board of Appeals would have the jurisdiction to hear the appeal that was submitted on September 12, 2018. In all other regards, Grossman's

Approved - Council Order #111810, the Council asks the Board of Appeals to hear this matter again and go through the full hearing with facts and do their job so that either something happens or they (the group) have a process to appeal to Superior Court.

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opinion is essentially consistent with Ed Bearor's opinion from last month. Councilor Fortier inquired about a newer appeal that had been filed in this matter; however, it was referenced in Grossman's opinion. He wanted to confirm that because of the time involved that appeal would also go to the Board of Appeals for them to rule whether the appeal was valid and whether they would take it up. Grossman replied that would be correct in the reverse order. She had learned a couple of days before she sent the letter to the City Manager that Judith Blood had submitted a second appeal to the Board of Appeals but appealing the same action. The Code Enforcement Officer's grant of a demolition permit to Webber back in September. That appeal alleging different/new errors was submitted in December and there is a clear 30-day limit on the submission of an appeal. In Grossman's opinion, the second appeal is not timely so that would be for the Board of Appeals to ultimately make that determination. They would need to convene a hearing, look at the information submitted, and decide if that appeal is timely. If the Board determines it is not, then they would not hear that appeal. Cole noted this discussion was to keep the City Council aware of what is happening; this appeal would go to the Board of Appeals. They have not yet acted upon it. Councilor Hamilton asked Judy Blood, what specifically she would like for action taken, so that it is very clear and on the record. Hamilton asked Blood to state the specific request of the City Council so that he can understand completely and that is part of the official record. Blood stated it felt awkward to say it just by itself without giving the City Council the history. So if she is not at liberty to do that; then it feels awkward, but she can do it. She would like to see the City Council rescind the permit; especially in light of the fact right now it is pending National Historic Registry approval. She had planned to explain this process to the City Council tonight; however, now it felt awkward to say just that and not give the full explanation. Blood would like for them to put it into the hands of an already formed group, who has since the last meeting raised over \$30,000 for the restoration of this building. This is 6 times what Webber Oil paid for it. She stated maybe not in the court of law but in the court of public opinion the City should do the right thing, negotiate with Webber for the return of the historic building, knowing that there is that group all ready to shepherd it through. Blood stated perhaps in the court of law without a covenant attached to the deed there is no legal standing; however, perhaps the fact that the proposal was not attached to a deed has something to say about the City Council and appeasing the residents of Ellsworth Falls with this acceptance of a bid for \$5,000. She felt they should have known to attach a covenant to the deed after all it was the City's attorney Ed Bearor who signed the deed. Blood stated she was not sure but maybe there was a conflict of

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interest back in 2005; or maybe there were backroom meetings that made sure there was not a covenant attached to the deed. Blood asked now for the City Council to do the right thing, negotiate with Webber, get the building back in the hands of the people who love it, and can take care of it. Hamilton asked Blood from her perspective concerning the ability for the building to be classified as a historic building, does it have to remain on that site; and is there any interest by Blood's group to have it relocated to some other parcel of land. Blood noted it was not her group; it was Maine Historic Preservation and National Historic Registry that makes the determination of whether it needs to be in place or not. It was Blood's understanding it needed to remain on that parcel of land. Hamilton clarified his reference to her group in terms of the interest and available funds raised. Blood explained the people that have pledged financial support at this point are doing so on good faith, should the building become available for restoration by a non-profit. Blood stated it is very complicated, because she does not own the building, the City does not own the building; however, she is trying to get in place everything needed to make the Council understand that this is not just a fly by night wish. This is a serious request, these are 500 strong signatures that are ready to step forward and shepherd this. Councilor Hudson, questioned whether that was a yes or no; Hamilton had asked specifically two questions. The first question was what Blood would like to see come out of this meeting and she answered that. The second question did not seem to have a clear yes or no answer provided and was then paraphrased by Hudson to be: is the group that has been formed (the non-profit) only interested in preserving the building in place or is it the building itself that they are interested in preserving, meaning if the building is moved to another parcel are they still interested in restoring it. Blood stated that is a very complicated thing, because there are actually two things going on right now. There is a National Historic Registry status that is pending and then there is also the idea of having a non-profit. One can actually supersede the other; one can make one not possible. Blood explained if they go for National Historic Registry and then look to have funding through grants where the cost of rehabbing the building would be benefited by grants those are not available if it is a 501 (c) (3). If it is a 501 (c) (3), then she has people that are ready to step forward and make donations. Blood stated it is really awkward because they are spinning about three plates right now, because they do not know what will happen. Hudson asked if the 501 (c) (3) is formed and the building is moved to another parcel the 501 (c) (3) could still support the building, it is only if it becomes under the National Historic Registry that they cannot support the building. Blood stated if they are looking for grant money to make the restoration about 40% of what it would cost otherwise, then it needs to

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remain in place. Blood asked and why would it not want to remain in place it is Ellsworth Falls and it is the one root that is left in Ellsworth Falls. Cole pointed out two concerns that he would like the attorney to speak on: 1) that Blood referred to the City Council rescinding the permit and Cole does not believe the City Council has the jurisdiction to do that. 2) What is before the City Council this evening is a remand from the Board of Appeals and how the City Council would like to deal with that. Cole explained the attorney has some recommendations on this topic and beyond that can provide guidance to the City Council. It is a policy question on behalf of the City Council in regards to getting involved in the restoration of that building. Cole did not believe that topic was on the agenda today, unless the City Council adds it to the agenda tonight. Grossman answered the questions on the record, Cole is correct that the City Council does not have the authority to rescind a permit approved by the CEO. An appeal to the Board of Appeals is the proper route, if someone thinks there is an error with a permit. Grossman stated that is simply not before the City Council tonight. Similarly, with what the Board of Appeals called a remand to the City Council, in Grossman's opinion that was outside of the limited options that a Board of Appeals has when someone makes an appeal. She did not think that Blood's appeal is properly before the City Council and she thinks it needs to go back to the Board of Appeals for that Board to take action. To hear the appeal, first to consider whether it has jurisdiction and if so to either grant or deny the appeal. Those are the only options any Board of Appeals has once someone appeals to them; they cannot just give out their authority to someone else. Grossman felt Cole was correct in regards to policy and even based on that she was not sure what the City Council would have the authority to do, other than express a sentiment that the negotiation in terms of acquiring the property or doing something really would have to be with the property owner at this point. Councilor Moore asked if the only way to save the building is to move it; he noted it is located on a very small piece of land that is owned by Webber Oil. Hudson noted unless Webber Oil decides they are willing to give up the land; that is not the sense she has gotten from Webber Oil. They appear happy to give up the buildings. Councilor Fortier pointed out the City Council has a letter from Webber to the Ellsworth Historical Society dated March 23, 2018 where they have offered to give a group the building for free and donate \$7,500 to help with moving it. Fortier noted the building has been moved once before. It was a little closer to the road before being moved further back onto a piece of land Webber donated for this purpose and placed onto a foundation. He noted the land is not the historic piece, the location in Ellsworth Falls is very important. Fortier felt there was an option within the letter to at least get the building off the property, salvage it for the future,

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and then there is time. He could not support voting in favor of spending taxpayer dollars; that is why the City got rid of it in 2005. The City either could not afford it or did not view it as a priority for the City at the time. Fortier would love to see the building saved, taken off the site, and then the planning can start to accomplish the end result. Blanchette clarified and Fortier confirmed via a private group. Terri Weed Cormier, President of the Ellsworth Historical Society confirmed the Society was asked about moving the building. She spoke with Rick Harnum at the Webber Corporation. It was discussed at the Historical Society level about taking the building on with the money and the group realized they had enough on their agenda right now. They currently have the building between the Court House and the Library as well as the Chamberlain House. Cormier explained quotes were obtained for moving the building from Jordan Movers in the approximate amount of \$20,000 - \$30,000. They did not move it originally so he did not know the specifics including whether it could even be moved. Cormier asked Harnum (Webber) if they could possibly gift them land behind which they could move the building onto; this would remove the hassle of dealing with power lines, permits and associated expenses. Webber was not interested in that scenario at all. Sadly, the Historical Society voted they would not be able to accept the offer of the building and the associated \$7,500. Blood explained the donation of \$7,500 would be approximately what it would cost to tear the building down. Blood stated since the last meeting at City Hall, there is a lot that has happened as far as the save the Ticonic Firehouse building is concerned. The National Historic Registry is one piece; it seemed fool hardy to allow someone to tear down a building when the status is pending on that. Should the building be torn down tomorrow and should the status get approved, it would be embarrassing for the City of Ellsworth and perhaps for Webber as well to have an approved building which is gone. Blood went on to explain the fundraising is complicated; however, they have a commitment in basically 10 days of \$30,000. Blood had faith that the City taxpayers would not have to take care of restoring this building nor would Blood expect them to do so; as a taxpayer she would not want to. Lastly, Blood explained just days before the Council meeting last month the property went from lease will build to suit to for sale. Webber is offering the property for \$275,000; Blood is looking into several possibilities. This change in listing changes a lot concerning the saving of this building, before it was not available for purchase. Now it is available for purchase; she is looking into possibilities with developers who might be interested in developing that 3 acre lot, in keeping with the history of Ellsworth Falls, and at the same time preserving the building whose roots deserve to remain in Ellsworth Falls. Blood explained there are a lot of possibilities that have come up

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since the last meeting. There are a lot of things the organization wants. Lastly, it was discovered at the December 19, 1988 meeting of the City Council that it was resolved to refer the Ellsworth Falls Community Building to the Ellsworth Historic Preservation for consideration and she has not yet uncovered the minutes from their meeting to see exactly what had happened with that. Blood stated it feels against better judgement to tear the building down. She noted during the awkward Board of Appeals meeting it was mentioned to wait 6 months before moving on this; Blood felt that might be a wise decision. Rebecca Maddocks-Wilbur, resident of Ellsworth noted all the discussion has been about the Appeals and not about the Agreement because the opinion is there is no precedents. She wished to remind the City Council that precedents are set by trying them. A judge did advise that suit should be filed. Maddocks-Wilbur stated they were advised to wait and see what happens with the appeal first because the agreement is legal and it was an agreement between the Webber Company and the City of Ellsworth. She feels the fact it was left out of the deed is a little odd and with proper digging may discover some improprieties there. Although the appeal has been focused on; the legal agreement still exists. Maddocks-Wilbur repeated many details of the agreement but emphasized the requirement, if there is any change in use it would be up to the City Council. This was a legal agreement. Hamilton stated last meeting there was considerable discussion that took place back and forth with a lot of information being shared. The City Council has tried to get a lot of information about this topic to gain an understanding. Hamilton stated he cannot go back in time, as a member of this Council he is charged with making decisions in the here and now based on information that is presented to him. As he listens to information, he also needs to make sure decisions he makes as an individual member of the Council is consistent with what the Council is able to do as a Council. They have limits and must fall within the limits that the Council has and no citizen would want this body to go beyond the scope of what the Council is here to do. Part of that responsibility falls into the realm of the legal aspects of it and therefore understanding legally what the Council can do as a Council is also very important. The Council heard the concern that was expressed about a potential conflict of interest pertaining to the attorneys and the Council acted appropriately by saying lets honor that and recognize there could be a conflict of interest and bring in an attorney that does not have a conflict. They asked the questions and received a legal opinion that was not clouded in a potential conflict. Hamilton was interested in hearing tonight the answers, some of it has already been heard concerning what legally the Council has at their disposal tonight to move this forward. This is not withstanding what the audience would like to see and it is not disregarding what has been presented but there are some

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limitations that the Council must pay attention to. Hamilton stated the above statement and observations are what he is thinking and considering as this moves forward tonight. Blood cited case law concerning a party seeking to reform a written deed must prove mutual mistake of fact by clear and convincing evidence. Blood submitted to the Council that selling a 2.5 story building on Route 1A for \$5,000 with the agreement that the building was going to be maintained would be clear and convincing evidence regardless of whether there is a covenant attached to that deed. Blood assumed that Webber understood their responsibility in purchasing a building for \$5,000 on Route 1A, regardless of whether there was a covenant attached to the deed. Blood explained when she first filed the appeals she contacted Dwight Tilton and she questioned him about the administrative appeal, as it did not feel like it fit because she was basing her argument on the RFP. She stated Tilton told her not to worry about it, she was just appealing his decision. Blood submitted her appeal under that guidance, she does not believe that guidance was given to her in error. She continued to say that by the time the appeal was heard her 30 day window for filing an appeal correctly was gone. Gordon Workman, resident of Ellsworth asked if at the time that Webber came to the Council to present their proposal, did the City Council at the time accept the proposal as stated. Blanchette explained an RFP is just a request for proposal. The RFP and what is accepted at the end of the process can be very close, the exact same, or miles apart. Blanchette stated from everything he has read on this topic they were not even close. Workman stated the reason he is asking is if Webber came to the City Council, gave the proposal, the Council accepted the proposal as presented at the podium, and then was written wrong there should be a recourse for that. Grossman stated the answer to Workman's question is within the minutes to the Council meeting back when the motion was made to sell the building to Webber in June of 2005.

There are two separate questions: 1) what did the Council authorize the City Manager to do with that motion and 2) separate question of whether there were commitments in the first place in that proposal by Webber. The third issue of once there is a deed and it has been signed does that overtake the offer and acceptance documents in the way of a purchase and sale agreement. Grossman felt the law is clear that it does, even if there was an intention; there is the question of a mistake of fact and nobody on either side of the transaction has suggested that they have made a mistake in that deed. Moore inquired if that would preclude the opportunity to take this to Superior Court. Grossman explained an appellant to the Board of Appeals, if they want, can appeal the Board of Appeals decision to the Superior Court. That option is still available. Hudson asked for clarification on what the Council's end goal in that situation

**RECORD OF REGULAR MEETING
ELLSWORTH CITY COUNCIL**

DATE: DECEMBER 17, 2018

TIME: 7:00 PM

PLACE: ELLSWORTH CITY HALL COUNCIL CHAMBERS

**CITY COUNCIL PRESENT: BLANCHETTE, FORTIER, GRINDLE,
HAMILTON, HUDSON, MOORE, AND PHILLIPS.**

CITY COUNCIL ABSENT:

**KEY SPEAKERS PRESENT: CITY MANAGER DAVID COLE, TAMMY MOTE,
GLENN MOSHIER, KATE J. GROSSMAN (FARRELL, ROSENBLATT &
RUSSELL ATTORNEYS AT LAW), DWIGHT TILTON, AND HEIDI GRINDLE.**

would be. She wondered if the Council goes to court and files a suit stating the deed was completed incorrectly or there was a misrepresentation of what was to happen and Webber said okay fine it is yours. Hudson felt the City doesn't want the building back. Cole and Grossman agreed that would be the remedy. Grossman clarified the question she was addressing in regards to Superior Court was in regards to the appellant still being able to go to Superior Court; however, yes the City could also go to Superior Court. If the City believed there was a breach of contract they could also go to Superior Court; likely if it were determined there was a breach the remedy would be the property would revert to the City. The City would then be in the exact same situation they were when they were trying to convey the property to someone else. Hudson asked if it would be the entire property or just the building. Grossman stated it would be whatever was described within the deed, a court would not try to divide the property. Workman stated once the Council approved the decision that is the way it should be written. He questioned if it was a bad decision how it was written or how it was done. Nicholas Navarre, Ellsworth resident stated Hudson kind of inferred that if Webber were to present the building to the City, the City does not want it. He questioned whether that was the official status of the Council. Hudson responded that she was not making an official status of the Council; she was stating originally the City accepted \$5,000 for the property because the Council was not interested in maintaining the building. At that time, the City Council was unsuccessful in getting anyone else to take the building and that is the reason it was sold for such a low dollar amount. Fortier noted this City Council has not set precedent on whether they want this building back or not. There have been conversations; however, it has not been put to a vote by the seven members sitting here tonight. Everyone has their personal ideas but it is important to understand that the City Council has not declared that. Hamilton noted based on what he is hearing he is not sure the City Council has the option as a Council to make that as a decision outside the fact of purchasing it for the sale price at an outright purchase of the property. The other avenue is whether there is a legal issue here that the City could force Webber to give the building back to the City, Hamilton is listening for factual legal information about whether the City has that ability. Short of those facts emerging, the only other option would be for the City Council to purchase the property outright. Hamilton noted there are two very separate issues in terms of possession of the building and those are several steps down the road. Hamilton did not feel the City Council was at the point of discussing possession of the building yet. Maddocks-Wilbur stated the advisory was to go through the Board of Appeals and then try to encourage the City Council to file suit in Superior Court and if not the

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City Council then Blood/Maddocks-Wilbur. The ultimate goal would be for Webber to relinquish the building, because they did not do what they said they would in the agreement. The goal is to relinquish the building and bring the building back into the control of the group that cares about it. Maddocks-Wilbur was speaking for the group (Blood, Cormier and herself) when she said if that occurred meaning it went to court and it was given back to the City then the group would like to take the building over. Maddocks-Wilbur knows the City of Ellsworth does not want to do that; it was clear from actions in the late 1980's and again in 2004/2005. They realize that and are ready to take over the building. In order to do that Webber would need to relinquish the building through court or otherwise. Moore thought if it was just a matter of relinquishing the building it would put the City in an odd situation, in the sense that whether it is given to the City or given to the group it is only the building and will still need to be moved. Moore believes Webber has plans for the property. Maddocks-Wilbur clarified she meant to say the property not just the building would need to be relinquished. Moore felt one of the possible recourses would be for the group to meet with Webber and ask them if they could possibly hold off on the destruction of the building pending the sale and maybe have the opportunity to deal with the new owners. Moore felt this might be the best possible solution. Maddocks-Wilbur stated unfortunately they have been contacted on numerous occasions and will not return the calls or have conversation. Fortier thought based on all the information in front of the Council tonight, they have been told by the attorney that the Council has no standing to make a decision on this demolition permit. Blanchette noted the Board of Appeals did not have the standing to send this item to the Council. Fortier agreed, so therefore according to Blanchette the Council has no standing on the topic. Fortier felt the best solution he could see for tonight on the advice of the City's attorney in this matter is the Council asks the Board of Appeals to hear this matter again and go through the full hearing with facts and do their job so that either something happens or they (the group) have a process to appeal to Superior Court.

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

RESOLVED to approve Council Order #111810, the Council asks the Board of Appeals to hear this matter again and go through the full hearing with facts and do their job so that either something happens or they (the group) have a process to appeal to Superior Court.

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Fortier inquired if we as a City are going to have our attorney representing us at that Board of Appeals meeting in this matter. Fortier wanted to ensure there was no question of a conflict. Cole believed the City would be represented by Grossman at that hearing; this was confirmed by Tilton and Grossman. Fortier noted the Council has started down this road and he wanted to ensure the group had a legitimate pathway to Superior Court. Hamilton noted besides the action that was just taken by the Council as what was in their control, the next best thing they could do was express a sentiment. Hamilton wanted to do that, he repeated what other Councilor's had already said. He thinks there is certainly a willingness to help participate in terms of talking with Webber and encouraging Webber to donate the building; they have acknowledged they would be willing to do that in the March letter. He would assume they would still be willing to do that, he thinks it would probably would mean relocating the building. If the goal of this process and the group's advocacy is to save the building and restore it then the best option would be to find the resources, the ability to turn that building over to a private entity, and to work with resources available to make that happen. Hamilton does not see any reason why there cannot be a process by which that is pursued in good faith and work together. That would accomplish exactly what the group is talking about, that may jeopardize the historical status, or maybe not. Based on Fortier's description of the property and where it sat before it may not disqualify the building from being added to the National Historic Registry. If the end goal is about preservation of the building, then the Council should continue to try and find a way to turn the building over to this group. They are very interested, strong advocates, have already raised some money, and let them pursue this opportunity.

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 #121800, Appointment of the City Clerk as the Registrar of Voters, with a term to expire on January 1, 2021. **

Appointment of Heidi-Noel Grindle, City Clerk as the Registrar of Voters with a term to expire on January 1, 2021.

Consent Agenda.

Approved - Consent agenda as presented this evening.

Approved – CO#121800, appoint City Clerk as Registrar of Voters expiration 1/1/2021.

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*Council Order #121801, Request of the City Assessor for abatement of FY 2018 taxes assessed to Richard Sereyko, Munis ID# 190360, in the amount of \$91.65 plus interest and fees. **

See attachment #2 for the complete request for abatement on Munis ID# 190360.

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

RESOLVED to approve the consent agenda as presented this evening.

NEW BUSINESS

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

Finelli's of Maine Inc., 12 Downeast Highway, for renewal of a City Class B License (Victualer/Liquor/Arcade) 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 Hudson, seconded by Phillips, it was unanimously

RESOLVED to approve the request of Finelli's of Maine Inc., 12 Downeast Highway, for renewal of a City Class B License (Victualer/Liquor/Arcade) 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.

**Approved –
CO#121801,
abatement for
Munis#190360.**

New Business.

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

**Approved -
Ellsworth CI, LLC
d/b/a Ellsworth**

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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 Fortier, 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.

Council Order #121802, Request of the City Manager to renew the Franklin Street Parking Lot Lease Agreement.

David Cole, City Manager reminded the City Council that a year ago this item was before the Council, because historically there was a 25 year lease with the United Methodist Church. In 1992, the City of Ellsworth was successful in receiving a grant. As a condition of receiving that State grant there had to be a long term lease to justify public right to the property. The 25 year lease expired last year, there were discussions with the United Methodist Church and it was determined this is a good partnership. The parking lot is on Franklin Street near the Pocket Park which houses the car charging station. The Church uses the parking lot on Sundays and for special events, the City utilizes the parking lot for overflow parking in the summer months. The City Council authorized the City Manager a year ago to enter into a one year lease; the reason for a one year time period was at that time there were discussions concerning potential capital improvements to the property. If the City makes improvements at that site, they would like to sign a lease for a longer time period. Those discussions are still on going with the United Methodist Church concerning the improvements; none of the improvements are overly significant within the larger picture. Paving that lot would cost within the \$30,000 to \$40,000 range. Cole is proposing to renew the lease from last year in the amount of \$1.00 and continue with the existing relationship. See attachment #3 for the complete request, lease renewal document, and the lease dated December 18, 2017. The request tonight is to exercise the option to renew the existing lease. Cole pointed out last year the lease period was one year and he proposes this extension be for one

Comfort Inn, 130 High Street, for renewal of a City Lodging License.

Approved - Council Order #121802, authorize the City Manager to execute a lease agreement for the Franklin Street Parking Lot with the United Methodist Church of Ellsworth for a period of approximately one year consistent with existing terms and conditions under the current lease agreement dated December 23, 1992.

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year as well. The one year lease that was entered into last year was completed with review by the City's legal counsel.

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

RESOLVED to approve Council Order #121802, authorize the City Manager to execute a lease agreement for the Franklin Street Parking Lot with the United Methodist Church of Ellsworth for a period of approximately one year consistent with existing terms and conditions under the current lease agreement dated December 23, 1992.

Council Order #121803, Discussion and action on appointing a City Councilor to the Frenchman Bay Regional Shellfish Municipal Joint Board.

Councilor Fortier was concerned that within the proposed motion the City Council will be notifying the Frenchman Bay Regional Shellfish Municipal Joint Board that the City of Ellsworth will be withdrawing as the Administrative Municipality. The proposed motion would give them a deadline of March 31, 2019. In Fortier's review of the document over the past few days the membership chooses the Administrative Municipality from its members. Their year runs with the municipality. For example, if Lamoine is on a town meeting schedule and they are the next one we need to allow time so that at their town meeting they can approve it. The City of Ellsworth can continue the financial portion until the end of June which is the City of Ellsworth's financial year. Those books are audited with the City of Ellsworth's records and filed, which will create a smoother transition to the next municipality. Fortier feels the City should negotiate with the next municipality and find out who will take on the role of the Administrative Municipality and what is in the best interest of both parties to complete this task. Chairman Blanchette questioned when the licenses go on sale for the program. Heidi-Noel Grindle, City Clerk responded that licenses go on sale beginning June 15 and the lottery is also held on June 15 of each year or the business day closest to June 15 if it falls on a weekend. Those licenses do not become effective until July 1 of that year. The public notice stating where the commercial licenses will be sold, the fee for the licenses, the deadline for the lottery and the date of the lottery must be advertised in May for the upcoming licensing year. The March date was based on providing a minimum 60 day notice of the intent to withdraw as the Administrative Municipality. The City Clerk's Department would definitely work with the new Administrative Municipality to transition. If a date is not provided

Approved - Council Order #121803, appointing Marc Blanchette to the Frenchman Bay Regional Shellfish Municipal Joint Board.

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following the 60 day notice, there is not a clear definition of which municipality will advertise and sell the commercial licenses. This needs to be determined, so that harvesters know where to purchase those and the non-resident harvesters are not late in purchasing their licenses. If the City of Ellsworth were finished with their role as the Administrative Municipality on March 31, they would not have to hold the lottery or deal with the preparations for the lottery. The new Administrative Municipality would advertise the details, hold the lottery, and start selling the commercial licenses for the upcoming year. Fortier stated his concern is all the other municipalities hold town meetings and those are not over until June; they would need to vote at a town meeting to take over the role of the Administrative Municipality. Councilor Hudson wondered if the deadline given was based on providing a 60 day notice, if that would allow a municipality time to hold a special town meeting. Holding a special town meeting could be expensive. Cole wondered if there was a middle ground where the City could express their intent to leave the position as the Administrative Municipality and exercise the 60 day notice period but come back to the City Council to extend the March 31, 2019 date if needed. Fortier was not sure he read the agreement the same way; he felt the 60 day notice applied if a municipality was leaving the organization, not stepping down as the Administrative Municipality. He felt that requirement only applied if the City were to back out of the entire agreement. Grindle explained Fortier was correct in reading it that way; however, the document does not provide an exact time frame for notice if stepping down from the Administrative Municipality. It made sense that if you had to give 60 days to leave the program they would need at least the same number of days' notice to withdraw from the duties as an Administrative Municipality in fairness to the program. It was unclear whether the 60 days' notice applies only to withdrawing completely from the program or any portion of. Tammy Mote, Deputy City Manager read into the record the Withdrawal portion of the Inter Local Agreement. That section states in the event the municipality withdraws one of the remaining municipalities shall assume those duties. The process for selecting an Administrative Municipality is outlined in the Agreement and all records shall be turned over to the new municipality. Fortier reiterated the City of Ellsworth would not be withdrawing from the program they would just be stepping back from being the Administrative Municipality. Councilor Hamilton suggested making a motion that would allow the City Manager to provide notice that the City of Ellsworth would like to withdraw as the Administrative Municipality. The terms of the negotiations would return to the next City Council meeting for further discussion and review, where a more definitive action may be taken concerning the timeframe. Councilor Phillips

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suggested completing the withdrawal process as Administrative Municipality as quickly as possible but no later than June 30, 2019. Fortier did not believe there was any timeframe outlined in the Agreement for stepping down as the Administrative Municipality the only requirement for notice relates to withdrawing from the entire agreement or program. Fortier asked Blanchette if he would accept a motion to appoint him to the Frenchman Bay Regional Shellfish Municipal Joint Board and allow Blanchette to talk to them about the best way to step down from the Administrative Municipality role. Blanchette stated there is a meeting in Lamoine on Thursday night and he will be attending that meeting.

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

RESOLVED to approve Council Order #121803, appointing Marc Blanchette to the Frenchman Bay Regional Shellfish Municipal Joint Board.

Before a vote was taken on the above motion, Hamilton inquired if the City Council needed to do anything with the motion around Blanchette going to that meeting with the intent to give the official word without including it in a motion. Fortier felt he could go and ask what would happen if; Hudson agreed Blanchette is not going with a final answer he is only asking how the City of Ellsworth would step down as the Administrative Municipality. It is our intent to investigate how it would work best to step down from those responsibilities for everybody. Blanchette would not be giving a final commitment or giving them a deadline. Phillips noted Blanchette would be giving valid notification that the City of Ellsworth intends to step down as the Administrative Municipality. Cole mentioned if this item is addressed at the January Council meeting and the 60 day notice did apply the March 31 date would still work. Blanchette will not be at the January City Council meeting; he will leave the notes from the Municipal Joint Board meeting with the City Manager to be dispersed to the members of the Council.

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

Executive session to discuss personnel matters in accordance with MRSA Title 1, Chapter 13, Section 405, Paragraph 6A.

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

**Approved - Entering
executive session at
8:20 PM for the
purpose of discussing**

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CITY COUNCIL ABSENT:

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GLENN MOSHIER, KATE J. GROSSMAN (FARRELL, ROSENBLATT &
RUSSELL ATTORNEYS AT LAW), DWIGHT TILTON, AND HEIDI GRINDLE.**

RESOLVED to approve entering executive session at 8:20 PM for the purpose of discussing personnel matters in accordance with MRSA Title 1, Chapter 13, Section 405, Paragraph 6A. There will not be any action on this item following adjournment from the executive session.

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

RESOLVED to approve adjournment from the executive session at 9:03 PM.

Adjournment.

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

RESOLVED to approve adjournment at 9:04 PM.

A TRUE COPY

**ATTEST: _____
HEIDI-NOËL GRINDLE**

personnel matters in accordance with MRSA Title 1, Chapter 13, Section 405, Paragraph 6A.

**Approved -
Adjournment from the executive session at 9:03 PM.**

**Approved -
Adjournment at 9:04 PM.**