

MEETING NOTICE

The regular monthly meeting of the Ellsworth City Council will be held on Tuesday, February 18, 2025, at 6:00 PM in the Ellsworth City Hall Council Chambers

Meetings will be broadcast live on:

Facebook: <https://www.facebook.com/ellsworthme>

YouTube: <https://www.youtube.com/c/CityofEllsworthMaine>

Spectrum Channel 1303

AGENDA

1. Call to Order. *Chair Beal absent*
2. Pledge of Allegiance.
3. Rules of Order.
4. Adoption of the Ellsworth City Council minutes from the following meeting:
 - January 21, 2025, Regular Meeting

Move to adopt N Smith, seconded by T White, passed 6-0

5. Presentation of Awards.
 - Tyler Kennedy – 10 years of service

6. City Manager's Report.

Would like to start out with that he has been here close to 10 months and loves this job. Has had to have some tough conversations with citizens as City Government is often the last stop to get help on something but there is also amazing citizens, communities and nonprofit leaders here that are always willing to help. Thank you to the Council and to the community for a great 10 months. Budget season is about to begin, his calendar for the next week is full of meetings with the department heads to go over their budgets. A big thank you to the department heads and staff who have put a lot of effort into the budget already. Going to dive in deeper to the requests and see what they incorporate so that they can come back to council earlier this year to more align our budget season with the School Department. It will be a very public process, as soon as they can get a draft budget together it will be available online.

This has been a very Maine winter, with lots of snow recently. He has gained a new appreciation for the work that the plow truck drivers do after going on a ride along with them. They have been working very hard to make sure that the streets are clear and passable. They have also been working hard on the sidewalks but have run into some problems with the sidewalk snowblower and will likely have a request in the budget for a new one.

Another big thing that he and the management team have been working on is updated job descriptions for the entire management group and a new SMART goal and performance review process.

Lastly, a quick update on the Courthouse. There is not much detail to say but things are going very well with the Judiciary. They are meeting weekly to iron out the final purchase and sale

agreements, developer agreements for the road construction, easement purchases, etc. He apologizes that they haven't been able to come forward with a more detailed and public announcement but everyone is on the same page as to how we move forward in the process.

7. Committee Reports.

- Request appointment of William Fogle to the Historic Preservation Commission.

N Smith – Bill Fogle has submitted his application to be one of the alternates for the Historic Preservation Commission. They currently have two vacancies for alternates. He has been a longtime admirer and supporter of historic buildings and is a past member of the Historic Preservation Commission and is ready to step back in to serve in this role.

Move to approve William Fogle as an alternate for the Ellsworth Historic Preservation Commission, N Smith, seconded by J Stein, passed 6-0

S O'Halloran – there was a conversation that he initiated at the Finance Committee about the equity that the city did not return to Karst family on the sale of their property. It is something that he had asked the City Manager to revisit with the Council as part of the May agenda, after budget season is over, the reason being that we sold their property and kept the equity. There were some questions regarding whether we legally had to do it at the time but he believes that it is something that needs to be discussed.

T White – is on the Community Development Block Grant Committee and they have officially launched the façade improvement grant program, that is offering matching funds to help the downtown businesses and property owners revitalize their building exteriors. It is funded through CDBG which is a US Department of Housing and Urban Development program which provides a 3 to 1 match with grants up to \$25,000. Applications are open now and due on March 14th. People interested in the program can find more information on the City's website. Arbor Commission has welcomed Michael Otwirk as Ellsworth's first Tree Steward. He is funded through a grant from the Conservation Corp through November 2025.

8. Citizen's Comments.

John Linnehan – would like to apologize to a few councilors, because his remarks made at a couple previous meetings; we are going to disagree on policies, but he believes that it was taken personally and wasn't meant that way. He read something this week that talks about needing a clear view of where our city is headed. In it's clear view he believes that it talks about a difference between being a constitutional law city and an administrative function city. For him the difference is one is a limited government city and one that is controlled by a lot of excessive administration. He believes there is a trend nationally coming and rather than being a follower he would like to see the city be a leader. President Trump has a department of government efficiency (DOGE) which he believes is address some of the situations about too much administration and not enough freedoms. He could encourage us to be leaders and not followers and he knows that there are people who would volunteer to do what Elon Musk is doing here locally and that would make the city more efficient and would reduce taxes and administrative bureaucracy.

Cara Romano, Heart of Ellsworth – here tonight on behalf of PJ Keenan, the Director of the Ellsworth Chamber of Commerce to spread the word on program they are doing in partnership with the Ellsworth Public Library and the Bar Harbor Chamber of Commerce. On February 26th at the Library from 8:30-9:30am, there will be a Maine Paid Family and Medical Leave seminar

being lead by Rudman and Winchell. It is all about the new MPFL law and hopes that people will be able to attend and it is free to the public.

9. Councilor Comments.

T White – went on a tour with Charlie in January of some of the City’s essential departments, including the Highway Department, PD, Wastewater Treatment Plant and the Water Department. Got to see a glimpse into what the day to day operations are for each of those departments, it was incredible and eye-opening. She believes it is something that any citizen should be able to do because she learned so much and has a greater appreciation for City workers.

S O’Halloran – he thought it might be handy if he pointed out an email that he received from a company call OHI Maine. There is a facility beside John Edwards that housed a business called the Eagle’s Nest; they left that facility and relocated up beside the Police Department. They were disappointed by all the fees involved in moving their business. They sent an itemized list of the costs, not the upgrades to the building, just the fees they had to pay for the move. We need to lower the costs to attract business instead of creating these barriers.

UNFINISHED BUSINESS

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.

NEW BUSINESS

10. Council Order #022500 Ratification of the contract for the incoming Deputy City Manager. *Manager Pearce – this is a return of the Deputy City Manager position, and it is a pretty critical function for the organization and one that we spent a lot of due diligence to find the right person for. We received around 200 applications for the role and ended up hiring the first person that was interviewed. There were a lot of great candidates, and of the final five any would have been excellent, but Sara was interviewed first because she scored the best by the committee and really shined during each round of interviews. We really felt she was the right person from both her experience level and management style.*

Move for the Ellsworth City Council to ratify the appointment of Sara Devlin as the Deputy City Manager as an administrative employee reporting to the City Manager, in accordance with the City Charter and applicable personnel policies, effective immediately, P Lyons, seconded by N Smith, passed 5-1 (S O’Halloran opposed)

11. Council Order #022501 Public Hearing and action on the request of the Public Works Director to accept the bid for local roads paving.

Mike Harris, PWD – asking to have this item tabled because the bids received had discrepancies that need to be worked out with the contractors. He doesn’t feel comfortable presenting a bid package that the bids weren’t “apples to apples.” Some of it is his own learning curve because

this is the first time he put out local roads to bid, but through the process and the bids that were returned, he has learned so next year will be done with a different metric. He would like to make sure that when he comes to Council with a dollar figure of this magnitude and with the amount of projects that we are trying to accomplish, that we are accurate and accepting the best bid possible. They will meet with both contractors at the same time to go over what they were looking for and have them resubmit the bids and then will come back in March to present the bids for acceptance.

Move to table, P Lyons, seconded N Smith, passed 6-0

12. Council Order #022502 Public Hearing and action on the request of the Public Works Director to accept the proposal to perform a major service on the Wastewater Department Dewatering Centrifuge.

Mike Harris, PWD – during the last budget season as part of their Capital Improvement, it was requested that some funds were set aside for them to have a major service done on the Dewatering Centrifuge, it is a service done every three years. They have one centrifuge that approximately 6-million gallons go through a year and it is important to protect that investment and make sure that it is sustainable. The manufacturer comes back and tears the machine apart and goes through everything, and replaces whatever spare parts need to be replaced, and performs a functionality test on everything to make sure it is working properly. This doesn't get put out to bid because it is proprietary, GEA Westfalia services their own machines, there are no after market companies that service their machines because they are not able to get any parts necessary for repairs and it would void any warranty that GEA Westfalia has. There is an added note in the memo that the cost could go up if certain parts are needed and that is because the last time there was a major service they ended up having to pay an additional fee for some defective issues found within the machine. There could be a 1 to 2 day interruption in service only for hauled waste and there is a possibility that there would be no interruption because they will make sure that the storage tanks that they pump it into are lowered before the date of the service.

Move to approve the expenditure of \$29,300 from the Wastewater Department Capital Improvement account for GEA Westfalia to complete a major maintenance service on the Wastewater Department's Dewatering Centrifuge, T White, seconded by N Smith, passed 5-1 (S O'Halloran opposed)

13. Council Order #022503 Update from the City Manager on the Brae Drive private utilities line issue.

City Manager Pearce – this is a tough situation but will give some background for those listening or who might be in a similar situation with a private road tie into the public utilities and how that works. Last year he was contacted by some Brae Drive residents regarding a water leak on the road that required a repair. After consultation with the Public Works Director, Wastewater and Water Departments, City Planner, prior City Managers and Councilors, it was determined that Brae Drive is a private road as such the City is legally prohibited from using taxpayer funds to repair the infrastructure, including the water lines within private roadways. The Public Utilities Commission (PUC) has certified that we can't send our staff to do the repairs. He had two meetings with Brae Drive residents, one with just him and some residents to get some background on what they are facing and a second one with residents, the Public Works Director, Planner and other city staff to strategize on some action options. Upon review of some points that the residents made, including other work done by the Public Works Department, the potential for the leak to

worsen, and the fact that the residents do pay water and sewer bills, the residents believed that would cover the infrastructure repairs. With the uniqueness of the situation, the subdivision being in the center of town around other streets that were accepted as city roads, he found a lot of validity to their arguments. They were looked into extensively and without authorization from Council to just repair the water line under current budgetary authority, the leak is not up to an emergency level but if it was to become so the Water Department would go in and make the repairs and charge the residents for the cost of the repair. Unless the Council wanted him to move forward with looking into the cost of repair for the water line at its current state at a cost to the citizen taxpayers, if that was the route they wanted to go with, and he would bring the total back to the Council at a future meeting for approval. Another option that not all the Brae Drive residents are amenable to but has happened many times for private lines, is to become a public way. If all the residents or a subset of them agreed to pay the cost of bringing the road to City standards, the city could bond for and do a special assessment on those residents for a fixed amount of time.

Jack Frost – It was 1949 when the plan was developed, it is Book 6 Page 35 at the Hancock County Registry of Deeds. It is a full layout by Earle and Charles Holt of the development, which is across the street from the Ellsworth track. Brae drive was built out by Bobby Ray of Ray Builders and includes Wichita Way, which connects at the end of the road. When they bought their house, the realtor was clear that Ray Builders had experience with several developments in Ellsworth and Brae Drive would become a city street once the final homes were completed and sold, which didn't happen. Around October of 1998, Bobby Ray shared with Dean Paquette, who was an Ellsworth Music Teacher and one of the first homeowners on Brae Drive, that he was done plowing the road. Dean went around the homes on the road telling people that they needed to give \$100 because they needed to plow the road. Around the summer of 2000, he had been away for the weekend and came home to the city wrapping up a repair of a blockage in the sewer line on the road. They did not hesitate to come fix the sewer, and it is important to note that the sewer was not a problem, what was a problem that was admitted by Dean's wife, was that there were things being flushed down the toilet that should not have been. More recently, there was a water leak, we don't know how long it's been leaking but it was not discovered until the residents of 16 Brae Drive sold their home. He mentioned the issue of the plan being laid out in 1949 because the standards of road development then were not what they are today, and they know when Mr. Ray built out the road and homes that they were different as well. The key point for Mr. Frost in all of this is that Argonne Street and Holt Drive were built before Brae Drive, and were not built to code, however the city accepted those roads. A neighbor, Tom Kirby who lives on Holt Drive, told him that he was friendly with Bobby Ray and he had told him that when the decision was made not to accept the road that the concern was the dog leg at the end of the road that connects with Holt Drive was not built to code. There was a meeting somewhere around 1992 when the road was not accepted, the residents would like to see the minutes from that meeting to know why it wasn't accepted. They do know that Bobby had a reputation of not always being up to code, but the city allowed the water and sewer to be connected and allowed him to continue to build the homes, even though he had been told they needed to be to code, or it wouldn't be accepted. The residents understand that the issue of setting precedent is a major thing for the Council, however they also consider that the city has some level of responsibility for allowing Ray Builders to connect to the city sewer and water after not meeting code on the other roads and still accepting them. It was Ray Builders' intent to

build a better road, if you go walk down Brae Drive, Holt Drive and Argonne Street, it is his belief that they would agree that it is a better built road. The residents understand that this is a matter that could have been addressed many years ago and they appreciate our willingness to understand the history and to help consider the options. Holt Drive and Argonne Street were both recently (in the last decade or so) repaved and brought into a different standard and at that time they made them one way, further making the point that they were not built to code. Brae Drive is much wider and has held up very well.

Adam Gibson – he and his family moved onto Brae Drive around April of 2019, they have not been here very long by love the community. Their first Halloween here was incredible because of how popular it is for residents to go with their children. The road is also a very popular place for walkers and runners, and they are very close to the track so there is a lot of recreation done in the area, so they view themselves as a very integral part of the community. Thinking about how we got to this problem, well it has been a problem that has been going on for more than 40 years and it is not necessarily anyone's fault, but they are asking for a collaborative solution.

Al Goodrich – he and his wife have lived on Brae Drive for 10-12 years now. He agrees with everyone else that it is a wonderful place to live, but this is a little frustrating as a homeowner and taxpayer. It is very clear that the developer abandoned the project as it was getting to its final stages and now them as a Street of 12 to 14 houses are looking like they are going to have to foot the bill for something that was abandoned. They understood when they bought the property that it was a private road, but they were also told that they receive all of the same utilities that every other citizen pays for and deserves.

Lauren Gibson – there is a lot that has been said already, but the one thing she would like to point out is the age of the neighborhood and thinking about private roads now that have public utilities and encouraging those homes to form a homeowners association so they can cover things like this. The only thing they pay in for is plowing, they don't have an association, but the houses have been there for decades now and there's not a homeowner's association and it was not something that ever came up.

City Manager Pearce – he was really excited about the abandoned road idea but after looking more into the legal details, like that it has been used as a roadway consistently for a long time, it doesn't fall into that category because an abandoned road needs complete abandonment to qualify.

Mike Harris, Public Works Director – we don't know what material the pipe is made of that is in the ground, there is some thought that it could be a plastic pipe which is not supposed to be used. He went to look at where the leak is located, and there is a power pole right there and a big outcropping of ledge. So, he would not be able to give a cost analysis on how much it would cost to fix just a water leak because he doesn't know if it would involve stabilizing the power pole or how far the ledge goes or what the pipe is made of. If you go beyond fixing the water leak and talk about the city taking the road over and bringing it up to city standards, you would be talking about a price tag of around \$800,000 as his estimate. The road is 19 feet wide and city standards calls for it to be 26 feet wide, it would make two 11-foot-wide travel lanes and two-foot travel shoulders. It would also require us to acquire land along either side of the road to increase the road width. He would also abandon the current infrastructure that is there and bring in an 8-inch sewer line to run up one side of the road and a 6-inch water line to go up the other side, and whatever storm

water would be required to properly drain the road. We have many private roads in the city, and over the years we have evolved and created road standards because of these types of situations. It is his opinion that we should not have private roads because the only person that benefits is the developer. They want to have the private roads so that they don't have to build them to the standards and so they don't have to put in water and sewer lines if they are 200 ft away from the public tie in. We have an ordinance that requires a homeowner's association, but if the association isn't doing their job, who enforces that and what is in the ordinance to enforce it, he says there isn't anything. What do you do if you have an association but there are people on the road who don't want to contribute to it, these are things to show why private roads shouldn't be allowed.

Adam Gibson – if the public system was so bad why did the city originally allow Bobby to connect to the system, he thinks that it would have been inspected by the city before they agreed to the connection. The width of the road was brought up, but again Brae Drive is wider than the two other roads that were accepted by the city, so he believes that there is a precedent there for accepting roads that don't meet the standards. There was a repair of the storm water system that city employees were present at to inspect to see what the condition of that system was like and maybe use that as an indicator of what the water system was.

Jack Frost – he spoke with Fred Erhlenbach, who had a relationship with Ray Builders and was around when everything was happening, he told Fred that a contractor had given them a quote of \$5,000 and Fred thought that was too high and that they should contact another contractor. Adam's point is key that the city would have had to inspect the water and sewer line before it was connected. He would like to see a map of other private roads in the in-town area that have both water and sewer.

Adam Gibson – it keeps being said that it is a private road, but a private road for whom? They don't have a formalized homeowner's association and there is really no indication who has ownership over the road because it was never formalized, it was never designed as a private road, it was always assumed that it would be taken over by the city. That is why they were pursuing the abandoned road idea because who actually owns the road.

Mike Harris, PWD – the sewer repair that happened on Brae Drive was the cross country run that crosses from Brae Drive to Holt Drive. There was no digging involved, the line was plugged and they had it jetted to clear the line. Brae Drive is not a unique situation in the center of the city, Edgewood Drive, behind Crazy Sumo and Irving, is paved and has water and sewer and Summer Way, up by the hospital, is also private and has water and sewer. If a private road subdivision goes in and connects to the public utilities, his concern is where they connect to the sewer, where that connection is he has governance over. They have a similar situation on another road, also built by Bobby Ray that was not built to city standards and would not allow it to be built that way today. Their purview is not to go out and inspect private roads, it is that you come to me with a drawing showing what you are going to put in for a sewer and water line and where it is going to connect to the main. They tell them what they want and then it falls on the Code Enforcement Officer to go out and make sure that what was dictated to them gets done. Since he has been here, we have had to pay for inconsistencies and mistakes from our past and we are trying to keep those from happening again.

For clarification Councilors tried to summarize the points that were made, and the question came up whether the residents actually wanted the city to take over the road.

Jack Frost – there has been a lot of talk about taking over the road, but they have never really asked for that; they have made the point that Holt and Argonne were accepted by the city many years ago before Brae Drive was built out, knowing that they weren't built to code. What they would like is the leak fixed, it is a public water supply, it will get worse the longer it goes on and we all know that it won't get better on its own.

Al Goodrich – they have been all but assured that if the water starts shooting up out of the ground that Public Works will come and restore the system so it would work again and they could get water, to him the commonsense approach here would be to fix a small problem before it becomes a huge problem. He wishes that we could get a resolution that is common sense based before this turns into a huge issue that either the city has to pay for or the residents do.

Councilor Stein stated that we could do it legally and have Public Works fix it, but then that sets a precedent and/or maybe a slippery slope or we don't do it and it maybe explodes and then we have to fix it but would have to charge the residents for the fix.

Councilor Lyons agrees with Mr. Gibson that the road is a big part of the city, but it is a private road. The difference between a public and private road is that if something goes wrong with the well or septic that the homeowner is responsible for paying for it. He also lives on a private road that was built in the 90's by a developer and there was no association created. He has become the president of their association that doesn't exist, and collects dues every year through letters, knocking on doors and cooperation with his neighbors, and it isn't fun. He wishes that he lived on a public road, his road is also only dirt, so it gets bumpy, and they have to pay for all the repairs. He is very sympathetic to their situation but here it is in the city's best interest to apply the law as it is, it is the right thing, and we need to be consistent in how we apply the law. He can't speak for previous Councils but being a municipal attorney, he advises his municipal clients all the time to not pay for things on private roads or private property, it is not in your authority or purview.

Bobbie Lane – her sister lives at 16 Brae Drive where the leak is. If they pay for the repair of the leak, does the city have to oversee that the work is being done? PWD Harris responded that they do not need to oversee it, if they were connecting to the main, they would be there but this is the service on the private road so they would not have to be there.

Lauren Gibson – she respectfully disagrees with Councilor Lyon's situation compared to theirs. She stated that he is talking about his house, septic and well which are not the same situation they are in because they have a shared utility. The residents understand that they are responsible for the utility from the road to their homes but when the system fails in front of any of their homes, who's problem is that, that is the situation they are in.

Councilor O'Halloran – he has listened to a lot of comments tonight that have been interesting from every side of this equation. If nothing else, he believes that we need to learn an important lesson from the behavior that happened years ago. The city shouldn't take the revenue for the water and sewer if they are not going to have some responsibility for the lines in his opinion and if a development today were to be built and the road not adopted would the water and sewer lines get connected. PWD Harris stated that it is a state law that if you are within 200ft of a public water/sewer line that you are required to tie in. With that information, Councilor O'Halloran believes that since the city is accepting the revenue, we need to step up and fix this.

City Manager Pearce – this situation is tougher and might be the slipperiest of the slopes because when you pay for the water and sewer it isn't for the entire system, it is for the delivery and treatment of the water and taking the sewer away from house.

Lauren Gibson – what are they not paying for that others are, where they would go to the public road and fix their utility but not theirs?

PWD Harris – it isn't about what they are paying or not paying. What it is, is that every developer has the option when they do a project on whether or not they want to have a public road or a private road. It benefits developers to do a private road because it cuts costs for them, so if they don't come to the city and ask them to take over the road then the city bears no responsibility for what happens on the road. The developer sells the properties on the road to people who want to buy them and it's fairly clear when you purchase them that they are on a private road, and they have stated that they knew it was private. There has always been the distinction that we don't plow, fix or do any other things on a private road.

Jack Frost – he believes it is very easy to understand that Bobby Ray built a lot of roads here that became public roads. Brae Drive was built better than Holt Drive and Argonne Street and was built with the intent of it becoming a public road. The other roads that are private with sewer and water, he would expect, were never built with the intent of becoming a public road.

Councilor Smith – she has been listening thoughtfully and would like to share her opinion on this if we are going to bring it back again. She is extremely frustrated with the developer, as we are hearing, and if there are realtors telling people who are buying homes information that isn't correct, that is frustrating as well. She hears that they don't want the city to take over Brae Drive because they don't want to pay for the upgrades, but we have sewer and water that doesn't meet standards, so that is something that she is trying to sort through. She is also frustrated, though not sure with whom, that past courtesy by the city has developed expectations and here we sit with an expectation because they did helpful things in the past, which is not helpful now. A question to the residents of Brae Drive, and the answer isn't needed right now, but why don't they have a homeowners association and why isn't there a structure to cover different expenses because they all know that things are going to come up.

Jack Frost – people on the road aren't planners, they just bought their homes and didn't think about what if something happened and in 30 years there has been one issue, and the city came and fixed it. Most of them pay for the plowing and haven't felt the need to put bylaw structures in place, should they, yes, he does think they should.

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

Motion to enter, P Lyons, seconded by N Smith, passed 6-0

Motion to exit, P Lyons, seconded by N Smith, passed 6-0

15. Adjournment.

Move to adjourn, P Lyons, seconded by N Smith, passed 6-0