



**City of Old Town
Committee of the Whole Minutes
February 05, 2024**

Committee of the Whole: Council President Pushor, Councilors – Linda McLeod, Carol May, Chris Pushor, Dave Wight, and Tim Folster. Councilor absent: Stan Peterson.

Administration Present: Bill Mayo, Laura Engstrom, Travis Roy, Lee Miller, Kyle Milan, Cassandra Pool, David Smith, David Russell, Danielle Berube, Irene Pehrson, EJ Roach, and April Buchanan.

Others Present: Kristi Trafton (City Attorney), UMO Liaison and 2 residents of Old Town.

Council President Chris Pushor meeting to order at 6:00 pm.

1. Review and discussion with the Committee regarding the opinion of Rudman & Winchell’s attorney on the City of Old Town’s Ordinance regarding dealing with barnyard animals in residential Zones. (Opinion in attachment A)
2. Danielle Berube, Finance Director updated the Committee on the following:
 - December 2023 Financials.
 - Certificate of tax settlements for the years of 2007 – 2022.
3. Travis Roy, Assistant Manager updated the Committee on the progress and produced a quote for review to the City Council regarding the purchase of a permanent message board be affixed on City property.
4. EJ Roach, Economic Development Director, addressed the Committee and spoke on DTOT (Downtown Old Town) recent acceptance into the MDC Downtown Affiliate Program.

Respectfully submitted,
Laura Engstrom
Old Town City Clerk

Attachment A
pgs. 1-4

RUDMAN WINCHELL

MEMORANDUM

TO: Old Town City Council
FROM: Rudman Winchell (SWW; KCT; RDL)
DATE: January 2, 2024
RE: Food Sovereignty and Home Rule Authority in Maine

This memorandum addresses how the recently passed Constitutional Amendment ("Amendment") concerning Right to Food operates alongside the "home rule" authority of municipalities. Specifically, the Council asked whether or not the "Right to Food" impedes their ability to regulate zones in which land owners may raise animals such as chickens and other poultry.

The short answer is that the Amendment's meaning is unclear, as it is the first of its kind in the nation and the Maine Supreme Judicial Court (sitting as and referred to hereafter as the "Law Court") has yet to issue any controlling guidance. Until the Law Court holds otherwise, a municipality may regulate the zones in which animals may be raised, so long as those regulations are reasonable and bear some rational relationship to protecting the health, safety, and welfare of the citizens.

I. Municipal Home Rule & Preemption

Municipalities in Maine have broad home rule authority to enact ordinances regulating almost any subject, unless the ordinance explicitly or by clear implication conflicts with another state or federal law. Me. Const. art. VIII, pt. 2, § 1; 30-A M.R.S. §§ 2101-2109, 3001. This authority is enshrined in both the Maine Constitution and state statute (excerpted in pertinent part below).

Constitution of Maine, art. VIII, pt. 2 § 1. Power of municipalities to amend their charters.

The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act.

30-A M.R.S. § 3001

Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter.

1. Liberal construction. This section, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect its purposes.

2. **Presumption of authority.** There is a rebuttable presumption that any ordinance enacted under this section is a valid exercise of a municipality's home rule authority.
3. **Standard of preemption.** The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law.

Notably, the Legislature has explicitly conferred broad home rule authority for municipalities to regulate land use and zoning within their borders. 30-A M.R.S. § 4352. This authority allows municipalities to regulate the areas in which the raising and keeping of poultry, such as chickens and turkeys (as well as other animals), are permitted.

II. Interpretation of the Constitutional "Right to Food"

The Maine Constitutional Amendment known as "Right to Food" was passed by referendum in the November 2021 election ("Amendment"). It reads as follows:

Article II, Sec. 25. Right to food. All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.

Constitution of Maine, art. I, § 25

The meaning of this language is uncertain. On its face, it appears to recognize a right to take some action and perhaps also a limit on the government from infringing upon that action. But the legislative history is very unclear as to the scope and effect of this right, if any. The Amendment was highly debated. As this was put on the ballot by a broad coalition of the Legislature and then approved by the voters, it is very difficult to discern a single, clear legislative intent. News articles from the time reported that the general intent of the Amendment was to "ensure the right to grow vegetables and raise livestock in an era when corporatization threatens local ownership of the food supply," and "a chance for Mainers to wrestle control of the food supply back from large landowners and giant retailers with little connection to the community." Patrick Whittle, *Maine passes nation's 1st 'right to food' amendment*, AP News (Nov. 3, 2021), <https://apnews.com/article/election-2021-main-right-to-food605019e60df5b3e32bc70c86dcf957b3>. Opponents believed that the Amendment was too broad and its intent and effect of the Amendment would be decided by judges not legislators or agencies with subject-matter expertise. Even some sponsoring lawmakers made statements that indicate it was intended to convey a message and is "pure poetry." Pierre Desrochers and Pierre Lemieux, *Maine's Mysterious New 'Right to Food'*, CATO Institute (Spring 2022), <https://www.cato.org/regulation/spring-2022/maines-mysterious-new-right-food> (quoting Republican Justin Fecteau). Put plainly, the Amendment, at the time it was debated and now, means different things to different people, and those individual meanings themselves sometimes are not logically consistent. It has been characterized as a "linguistic Trojan horse." *Id.* It is the

first State Constitutional Amendment of its kind and many other states are looking to how Maine courts will interpret it.

Some proponents have argued the word "unalienable" means that this amendment on its face prohibits municipalities from enacting any regulation that governs how they produce food. While the Law Court will ultimately decide the meaning of the Amendment, such an argument lacks serious merit.

Webster's Dictionary defines "unalienable" as "impossible to take away or give up." Using that meaning, Unalienable Rights, as granted in the United States and Maine Constitutions, are rights which cannot be taken away or given up. The Maine Constitution specifically says that "all people are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

However, courts have historically recognized that such rights may be regulated and limited. *See, e.g., Euclid v. Ambler Realty Co.*, 272 U.S. 365 ("[T]hese powers must be reasonably exercised, and that a municipality may not, under the guise of the police power, arbitrarily divert property from its appropriate and most economical uses, or diminish its value, by imposing restrictions which have no other basis than the momentary taste of the public authorities."); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) ("[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."); and *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969) ("[H]e may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others.").

Given the compelling government purposes that often undergird the regulation of agriculture (*e.g.*, health and safety concerns related to sanitation, noise, animal welfare), Courts will almost certainly impose some limits on the scope and effect of this Amendment. Absent precedent demanding courts apply a higher level of scrutiny, whether an ordinance conflicts with this Amendment will most likely be measured by applying the "rational basis standard"; this standard is highly deferential and holds that an act of a legislature is only unconstitutional in the most exceptional of cases and nearly every legislative act subject to this standard is found to be constitutional. *See, e.g., Doe v. Williams*, CV-06-113, 2011 Me. Super. LEXIS 162, *124 (Aug. 18, 2011) (citing *Doe v. Moore*, 410 F.3d 1337, 1345 (11th Cir. 2005)). Therefore, until the Law Court provides otherwise, we advise that any ordinance is consistent with the Amendment so long as one may reasonably discern some rational purpose for enacting it that relates to their constitutional and statutory police powers (*i.e.* the health, welfare, and safety of citizens).

III. Preemption

One limit on a municipality's home rule authority is the doctrine of preemption. Under the Supremacy Clause of the United States Constitution, Federal Law supersedes and preempts State

Law. U.S. Const. art. VI, § 2. State law may also preempt municipal law. 30-A M.R.S. § 3001 (excerpted above). In summary, this doctrine provides that state or federal law can preempt (*i.e.* overrule) municipal law when the state or federal government expressly preempts local regulation or acts in such a compressive manner on the subject that it is said to have implicitly preempted local regulation.

Here, one could argue this Amendment conflicts with the myriad of state and federal laws governing agriculture. Lawsuits making this argument are percolating through the court system now. To avoid concluding federal law preempts a local amendment, the courts may construe the meaning and application of the Amendment narrowly.

V. Recommendation

The meaning of the Amendment on its face is not clear and will inevitably be interpreted by the courts. We anticipate the Law Court will soon issue a decision in *Parker v. Department of Inland Fisheries and Wildlife*, a case in which the plaintiffs cite the Amendment to challenge the ban on Sunday hunting. At the very least, this decision will likely explain how broadly or narrowly the Amendment should be applied. Our opinion may be revisited in light of this anticipated decision.

But until then, the City should continue to enforce its existing ordinances. An ordinance zoning where animals may be raised is constitutional, so long as there is some rational basis for it, such as protecting neighbors in denser areas from filth and noise. Having reviewed the City of Old Town's ordinances zoning certain forms of agriculture, we conclude that there is such a rational basis and the ordinances remain constitutional, notwithstanding passage of the Amendment. Therefore, unless the Council desires to amend said ordinances as a matter of policy, we advise no further action.



**City of Old Town
Regular Council Meeting Minutes
February 05, 2024**

Council convened February 05, 2024, in the Old Town City Council Chambers, 265 Main Street.

Councilors present: President Chris Pushor, Tim Folster, David Wight, Carol May, Mike May, Linda McLeod, and absent - Councilor Stan Peterson.

Administration present: Bill Mayo, Laura Engstrom, Travis Roy, Lee Miller, Kyle Milan, Cassandra Pool, David Smith, David Russell, Danielle Berube, Irene Pehrson, EJ Roach, and April Buchanan.

Others present: Kristi Trafton (City Attorney), UMO Liaison and 2 residents of Old Town.

Council President Pushor called the meeting to order at 6:24 p.m.

Approval of the Minutes:

Resolved, the Old Town City Council hereby approves the following minutes as presented:

January 02, 2024, Regular Council Meeting.

Motion made by Councilor Mike May, seconded by Councilor Folster.

Approved, 6 – 0, (Motion passed)

**Petitions, Communications, and Citizens' Requests
Reports**

Mona, resident on High Street addressed the Council with some requests:

- To make a special exceptional case in the Ordinance banning backyard animals in residential Zones, for her to receive her Chickens back.
Council President Pushor replied “at this time with pending legal trials going on regarding the right to food law, the Ordinance stands not allowing backyard animals in Residential areas in the City. The outcome of these trials may affect the City Council revisiting her request.”

- Mona said the social media negatively impacted her regarding her owning chickens in the City’s Residential zone. She felt the City of Old Town had some fault in that and asked the procedure for a citizen removing the City Manager from his position.
Council President Pushor said “he did not think that there was a policy in place for a citizen to proceed with removing a City Manager but, he would find that out and get back to her at the next Council meeting.”
- She asked the Council if they had worked on getting a liaison or mediator to be able to solve any cultural customs/language barriers between the City and foreign people, like herself.
Council President Pushor replied, “it is not something the City Council has considered at this point but possibly in the future.”
- She stated that the green pay as you throw trash bags were of poor quality and would the City consider getting rid of this type of waste removal system or have better quality bags made.
Council President Pushor told her that the green trash bags are already being worked on by the supplier to make the durability better.
- She further asked the Council what the process is for removing a City Councilor.
Council President Pushor replied that he will get back to her with that procedure.
- Anthony, Mona’s spouse addressed the City Council and said there are two legal cases in effect regarding the Right to Food law but neither one really pertains to the actual Amendment, so they will probably not be successful in their passage. He thought neither one would be relevant to their personal case, regarding owning chickens. He asked that the Council take that into consideration when the rulings are finalized in the legal cases.

A. Council President **(No Report)**

B. Standing Committees
Administrative Services, Economic Development, Finance Services, and Public Services
(No Report)

C. City Councilor: **(No Report)**

D. City Attorney: **(No Report)**

E. Special Comm.: **(No Report)**

F. City Manager

Bill Mayo updated the City Council on the following:

- At the Bangor Chamber of Commerce dinner event the City of Old Town had several local business owners that were recognized and Congratulations to them.
 - Jason Clay owner Governor's Restaurant, Volunteer of the Year Award.
 - Alex Gray owner of Kanu Restaurant and Bangor Waterfront Concert Series, Region Cultural Award.
 - Global Secure, Innovative and Entrepreneurship Award.
- Downtown Streetlight poles are going in and should have some mast arms and lights that are permanent soon.
- Environment and Natural Resources Committee meeting in Augusta for a work session on Thursday Feb. 8th at 1:30 pm on LD 2135 on Juniper Ridge Landfill. It will be televised for viewing.
- Council President asked on the progress of the Llewellyn Estes temporary bridge. Bill stated that it is still on schedule and the temp. bridge should be open in another month or so.

Consent Agenda

1. Resolved, the Old Town City Council hereby approves the renewal applications for:

- Alex Gray, Main Street Bookstore, LLC. d/b/a Kanú, located at 283 Main Street. (Liquor License and Special Amusement)
- DMCP Group, LLC. d/b/a Dunkin', located at 975 Stillwater Ave. (Victualer's)
- Elks Lodge, #1287, located at 37 Fourth Street. (Liquor and Victualer's License)
- VFW Post 3381, located at 173 Main Street. (Liquor License)

All Licenses pending City Inspections.

Motion made by Councilor Wight, seconded by Councilor Carol May.

Approved, 6 – 0, (Motion passed)

Public Hearings and Second Reading of Ordinances (None)

1. The Old Town City Council conducted a Public Hearing on a proposal to change the Official Zoning Map. Specifically, Tax Map 33, Lot 52, as shown on exhibits 1 and 2 from P, Resource Protection to R-4, Seasonal Residence. This proposal was unanimously approved by the Old Town Planning Board at their December 12, 2023, Meeting. (Information/Maps attached)

Council President Pushor Opened Public Meeting: 6:38 pm

Dave Russell, Code Enforcement officer, addressed the Council and explained the details in this change to the Zoning ordinance.

No public comment.

Council President Pushor Closed Public Meeting: 6:41 pm

- 1a. Resolved, the Old Town City Council hereby schedules a Second Reading for final approval for February 20, 2023, on a proposal to change the Official Zoning Map. Specifically, Tax Map 33, Lot 52, as shown on exhibits 1 and 2 from P, Resource Protection to R-3, Rural Residence Farming.

Motion made by Councilor Mike May, seconded by Councilor McLeod.
Approved, 6 – 0, (Motion passed)

Old Business:

New Business:

1. Resolved, the Old Town City Council hereby approves the Issuance of a Proclamation in observance of Congenital Heart Awareness Week, February 7th – 14th, 2024. Congenital Heart Disease (CHD) is the most prevalent birth defect, affecting one in every 100 births. (Proclamation attached)

Motion made by Councilor Folster, seconded by Councilor Wight.
Approved, 6 – 0, (Motion passed)

2. Resolved, the Old Town City Council hereby accepts an after- deadline redemption for Kaja Holdings 2 LLC., located at 113 Lincoln Street for 2020, 2022, and 2023 Real Estate Taxes and 2018 – 2021 Sewer fees in the total amount of \$4545.08 which include all interest, lien costs, and a \$150.00 Late Redemption fee. The Old Town City Council further authorizes the City Manager to execute a Municipal Quit-Claim Deed.

Motion made by Councilor McLeod, seconded by Councilor Mike May.
Approved, 6 – 0, (Motion passed)

3. Resolved, the City Council hereby approves going into Executive Session, pursuant to Title 1, M.R.S.A., §405(6)(C), for the purpose of discussing an Economic Development matter.

Motion made by Councilor Wight, at 6:43 pm, to go into Executive Session seconded by Councilor Carol May.
Approved, 6 – 0, (Motion passed)

Motion made by Councilor McLeod, at 7:03 pm, to come out of Executive Session seconded by Councilor Mike May.

Approved, 6 – 0, (Motion passed)

4. Resolved, the Old Town City Council hereby approves going into Executive Session pursuant to MRSA Title 405, Section (6)(A) for the purpose of discussing a Public Safety Personnel matter.

Motion made by Councilor Carol May, at 7:04 pm, to go into Executive Session seconded by Councilor Wight.

Approved, 6 – 0, (Motion passed)

Motion made by Councilor McLeod, at 7:42 pm, to come out of Executive Session seconded by Councilor Mike May.

Approved, 6 – 0, (Motion passed)

Adjournment:

Motion to adjourn at 7:45 pm made by Councilor Folster, seconded by Councilor Carol May.

Approved, all in favor, 6-0, (Motion passed)

Respectfully submitted,
Laura Engstrom
City Clerk -Old Town

City of Old Town Planning Board

265 Main Street
Old Town, Maine 04468

207-827-3965

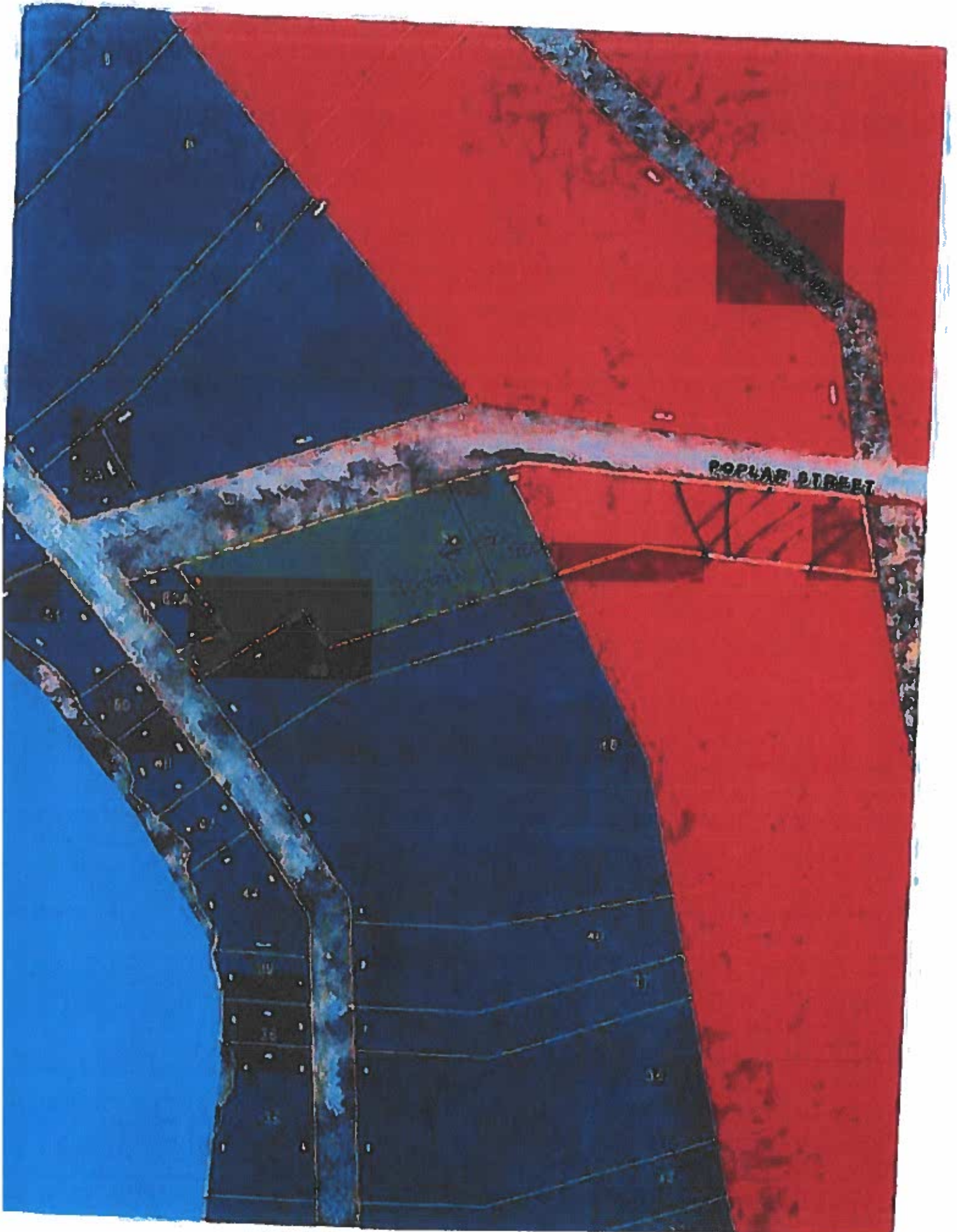
Whereas the Planning Board heard a request from Nicole Mussnug, owner of a property located at 254 Woodland Avenue, with boundary lines extending onto Poplar Street, and whereas appropriate soils have been reported for the development of this parcel, the Planning Board recommends that approximately .29 acres, (12,632 sq. ft.) of a 2 acre parcel of land now listed as (P) Resource Protection, be changed to (R-4) Seasonal Residence, as depicted on the Assessor's Tax Map 33, Lot 52. The remaining .71 acres will remain in the (P) Resource Protection Zone. Thus, allowing approximately .57 acres, (24,829 sq. ft.) of buildable area so that a beneficial division of the lot may occur. (Case Number 1558)

Whereas the Planning Board recognized a developmental benefit with the above described changes to the "Official Zoning Map", a motion was made and seconded for approval and recommendation to the Council, that the above-described changes be approved and as such be shown on the "Official Zoning Map".

These changes to the "Official Zoning Map" of the City of Old Town were approved and are to be recommended to The Old Town City Council.

CHAIR *Thomas W. Shi*
H. J. Washburn
James J. J.
Sandra J. Russell
T. J.
Sam Long

DATE: December 12, 2023



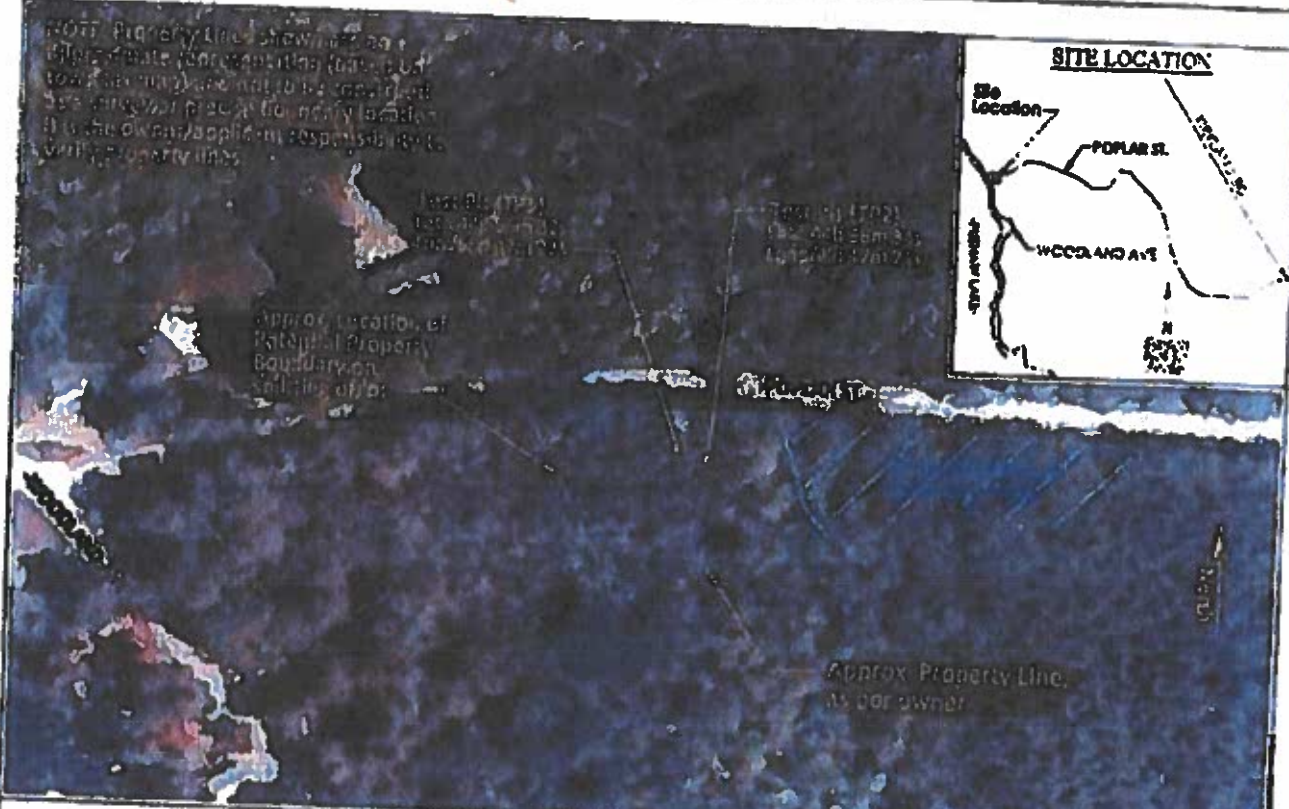
PRELIMINARY SITE EVALUATION/SITE SUITABILITY SOIL TEST

Date of Site Visit: 05/26/2023

Town, City, Plantation
OLD TOWN

Street, Road, Subdivision
POPLAR ST./WOODLAND AVE.

Client Name
MUSSNUG, NICOLE



SOIL DESCRIPTION AND CLASSIFICATION (Location of Observation Holes Shown Above)

Observation Hole TP1 Test Pit Boring
1" Depth of Organic Horizon Above Mineral Soil

Depth Below Mineral Soil Surface (inches)	Texture	Consistency	Color	Mottling
0	LOAM		STRONG BROWN	
10			DARK YELLOW BROWN	NONE EVIDENT
20	FINE SANDY LOAM	FRIABLE	TESTED	
30		FIRM	OLIVE BROWN	Few Concentrations & Depletions
40	Possible Ledge at 32" - should be verified or investigated with a backhoe test pit before final septic design			
50				

Observation Hole TP2 Test Pit Boring
1" Depth of Organic Horizon Above Mineral Soil

Depth Below Mineral Soil Surface (inches)	Texture	Consistency	Color	Mottling
0	LOAM		STRONG BROWN	
10		FRIABLE	DARK YELLOW BROWN	NONE EVIDENT
20	FINE SANDY LOAM		TESTED	
30			LIGHT OLIVE BROWN	Few Concentrations & Depletions
40	Possible Ledge at 30" - should be verified or investigated with a backhoe test pit before final septic design			
50				

Soil Classification Profile	Slope Condition	Limiting Factor	Ground Water Restrictive Layer
3	All	32	0

Soil Classification Profile	Slope Condition	Limiting Factor	Ground Water Restrictive Layer
2	All	30	0

[Signature]
Site Evaluator Signature

383
SR #

09/18/2023
Date



PROCLAMATION/RESOLUTION

CONGENITAL HEART DISEASE AWARENESS WEEK FEBRUARY 7-14, 2024

WHEREAS, congenital heart disease (CHD) is the most prevalent birth defect in the United States, affecting one in every 100 births; and

WHEREAS, CHD has been identified as the leading cause of birth defect-related deaths; and

WHEREAS, 25% of those children will need at least one heart operation to survive; and

WHEREAS, there is no known cure for CHD, as it is a lifelong disease that requires ongoing specialized care; and

WHEREAS, the health and well-being of congenital heart patients is of paramount importance; and

WHEREAS, medical research can provide more identifiable means of the origins and symptoms of CHD; and

WHEREAS, it is crucial that individuals planning a family, obstetric physicians, pediatricians, and all those in the medical field have a greater understanding of the potential for CHD; and

WHEREAS, Congenital Heart Disease Awareness Week provides the opportunity for patients and families affected by CHD to share their experiences and knowledge so that the general public may be aware of how this defect affects our lives; and

*THEREFORE, I, **Council President Christian Pushor**, do hereby proclaim February 7-14, 2024 "Congenital Heart Disease Awareness Week in Old Town, Maine, and encourage everyone to learn more about CHD and its effects on our friends, family, and community.*

Chris Pushor _____, City Council President, Old Town, Me. Feb. 05, 2024

visit chdtablettalk.org
email: chdtablettalk@gmail.com
  @chdtablettalk

