

TOWN OF BATH COUNCIL MEETING

November 21, 2023

1. **ORDER:** @ 5:30pm by Mayor.
2. **ROLL CALL:** Scott Merki (X) Susan Webster (X) Elizabeth Skinner (X) Greg Schene (X) Rebecca MacLeod (X) Mary Lynn Hickey (X) Tom Hall (X) Quorum present.
3. **REVIEW OF MINUTES:** Minutes of the Regular Meeting of November 7, 2023 were approved by Common Consent.
4. **PERSONS BEFORE COUNCIL:** Kate Lehman, member of the Bath Tree Board, was present to explain the amendment to the Bath Tree Ordinance as proposed (attached).
MOTION: To amend the agenda to bring forward the Ordinance Committee report- Webster/ Hickey- Carried
MOTION: To approve Bath Ordinance #2023-11-01 for First Reading- Webster/Hall-Carried
MOTION: To resume the regular agenda- Webster/Schene- Carried
Clint Dailey of Morgan County Association of Farms and Food made a \$2,000.00 donation presentation to the Bath owned Community Garden. Appreciation was shown for the organization's generosity.
5. **COMMUNICATION FROM MAYOR:** The Mayor announced that the annual Bath free pickups for yard waste will be November 29 and 30.
The Town Hall office will be closed on Thanksgiving Day, November 23, and on Friday 24, 2023.
The annual Deck the Meters project will be produced this year by the Town of Bath.

COMMITTEE AND BOARD REPORTS

1. **BATH DEVELOPMENT AUTHORITY:** Next meeting is December 12 at 4:30pm at the Courthouse.
2. **PARKS & REC:** No report at this time. The next meeting is December 20.
3. **PLANNING COMMISSION (PC):** The next meeting is December 7 with the Public Works Committee. Work is continuing on the next Bath Comprehensive Plan.
4. **RAIL/TRAIL (NBRT):** The next meeting is November 29. The progress report has been submitted to the Town office (attached) by Co-Chair Pete Brown who was in attendance with further details.
Councilwoman MacLeod presented the Native Havens Depot Planting Project Design Proposal (attached) for discussion and approval.
MOTION: To approve the Native Haven Planting Project Design Proposal as presented- Webster/ Hickey- Carried
5. **STREETSCAPE:** The next meeting is December 21 at 9am. The progress report has been submitted by Co-Chair Pete Brown and was present with further details.
Discussion turned to the BSSP Project and the recently received WV DEP Notice of Violation. The Town of Bath received the notification as the project sponsor. A

complaint was submitted by Kate Lehman. Brown explained the issue resolved itself naturally, but the DEP violation must go through its process. The WV DOH and the Delauter Construction Company will be involved in the resolution of this issue.

6. TRAIN DEPOT: Chairman Webster reported on the success of the Bath Veterans Day Celebration and Depot Grand Opening. Future steps include organizing interested parties to plan and facilitate the development of the property for public use, education, recreation and economic development.
7. LANDMARK COMMISSION (HLC): No report at this time.
8. CLERK/RECORDER REPORT: No report at this time.
9. FINANCE: Chairwoman Webster delivered the following bills for approval:
 - (a) Town of Bath \$18,277.11- Motion to approve: Webster/Schene- Carried
 - (b) BSWW \$38,627.05 – Motion to approve: Webster/MacLeod- Carried
 - (c) Cemetery \$5,600.00- Motion to approve: Webster/Schene- Carried
 - (d) Depot \$266.50- Motion to approve: Webster/Schene- Carried
 - (e) Streetscapes \$106,999.25- Motion to approve: Webster/Hall- Carried
 - (f) Tree Board \$700.00 – Motion to approve: Webster/Schene- Carried
10. TREE BOARD: The next meeting is January 17, 2024 at 4pm.
11. GRANT: The next meeting is December 11 at 4:30pm. Chairwoman Hickey is working on a Public Safety grant submission in early May. She is also researching grants to improve the Bath website with added economic development information, Streetscape Street lighting and solar energy opportunities.
12. PUBLIC SAFETY: The next meeting is December 13. No report at this time.
13. CEMETERY: The next meeting is November 29. Councilwoman Skinner reported that MRB, LLC has been affected by weather with the mausoleum repair work. The Committee will be meeting with the contractor soon.
14. PUBLIC WORKS: Next meeting is December 5. Chairwoman MacLeod advised of repairs to the Kenworth trash truck. She is developing a list of potholes to fix. Trees will be planted around the Greenway Cemetery shed.
15. ORDINANCE: The next meeting is December 20. Chairman Schene explained that the Second Reading of the amended Tree Ordinance will be at the next regular Council meeting. His research is continuing on amending the B&O ordinance and creating a short-term rental ordinance.
16. BSWW: Chairman Hall announced that daily operations are going well. They are scheduling the new pump to be installed in the wet well. Taps are being provided to new customers.
17. MOTION TO ADJOURN: Approved by Common Consent.

Attest:

Mayor

Scott E. Miki

Recorder

Susan Webster

TOWN OF BATH SPECIAL ORDINANCE
TREE BOARD
2023-11-21
AMENDING ORDINANCE 2005-09
URBAN TREE ORDINANCE OF THE TOWN OF BATH

Whereas, the Town of Bath desires to create a Tree Board, the original Ordinance 2005-09 does not meet all necessary requirements and documentation to provide for public safety or to preserve and protect all plants, shrubs and trees in the Town of Bath; and,

Whereas, this article provides authority to the Tree Board over all trees, plants and shrubs planted within the right-of-way's, parks and public places of the Town of Bath. The Tree Board shall have the right to plant, prune, maintain and remove trees, plant and shrubs within the public right-of-way's and other publicly owned grounds as may be necessary to ensure public safety and to preserve and enhance the beauty of such publicly owned lands; and,

Accordingly, it is therefore ordered that the Town of Bath Council amend Ordinance 2005-9 as follows:

SECTION 1: DEFINITIONS:

- A. Municipality is the Town of Bath, Morgan County, West Virginia.
- B. The Tree Board is the body that advises the town on matters affecting street trees, park trees and trees in the three cemeteries in the Town of Bath.
- C. Street trees are herein defined as trees, shrubs, bushes, and all other woody vegetation on land lying between property lines on either side of all streets, avenues or ways within the town.
- D. Park trees are herein defined as trees, shrubs, bushes, and all other woody vegetation in public parks, and all areas owned by the Town, or to which the public has free access as a park.
- E. There are three cemeteries on Town property, including the Old Dutch Cemetery, the Old English and Greenway Cemetery.
- F. Heritage Trees are typically large individual trees with unique value and are considered irreplaceable. The major criteria for heritage tree designation are age, rarity, and size, as well as aesthetic, botanical, ecological and cost to replace. The Town Council, upon recommendation of the Tree Board, may designate specific trees on town property as heritage trees. Upon the adoption of such a list by the Town Council, a copy shall be kept on file in the office of the Town Clerk. The list of heritage trees may be modified from time to time. Once a tree on town property is designated as a heritage tree, it will remain so unless it becomes necessary to classify it as a risk tree that must be removed. Heritage trees on town

- H. Damage is any injury to or destruction of a tree, including but not limited to: uprooting; severance of all or part of the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk surrounding the tree with impervious paving materials; or any trauma caused by accident of collision.
- I. Nuisance is any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or poses a threat to public health, safety and welfare.
- J. Top or Topping is the non-standard practice of cutting back limbs to stubs within a tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.
- K. Tree Steward means the person within the Tree Board who administers the provisions of this Ordinance under the supervision and direction of the Town Council. At a minimum, a candidate for Tree Steward has a good understanding of the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and of the "Best Management Practices (BMPs) published by the International Society of Arboriculture. (NB: The original ordinance requires an arborist, an unrealistic expectation. To require more than a good understanding of ANSI makes finding a tree steward difficult if not impossible.
- L. An Arborist is a certified specialist in the care and maintenance of trees. At times the Tree Board may recommend that an arborist be called in to determine the specifics of care and maintenance for one or more trees.
- M. Property Owner shall mean the person(s) owning a designated property as shown by the County Assessor's Plat of the Town of Bath, as the case may be.

SECTION 2: CREATION AND ESTABLISHMENT OF A TREE BOARD

There is hereby created and established a Tree Board for the Town of Bath, Morgan County, West Virginia.

SECTION 3: TERM OF OFFICE

The team of five (5) persons to be appointed by the Mayor and Council shall be as follows:

- A. Tree Steward (two year term)
- B. Member of the Town Council (two year term)
- C. Resident of the Town of Bath or second Town Council Member (two year term)
- D. Two (2) residents of Morgan County (two year term)

In the event that a vacancy shall occur during the term of the member, his/her successor shall be appointed for the unexpired portion of the term. The Tree Board may propose one or more names, and the Tree Board member who is a representative of the Town Council will share this recommendation with the Council.

SECTION 4: COMPENSATION

Members of the Tree Board shall serve without compensation.

SECTION 5: DUTIES AND RESPONSIBILITIES

- A. Coordinate and promote Arbor Day activities;

- B. Review and update a five-year plan to plant and maintain trees on town property
- C. Support public awareness and education programs relating to trees;
- D. Review town department concerns relating to tree care;
- E. Submit an annual report of its activities to the town council;
- F. Assist with the annual application to renew the Tree City USA designation;
- G. Recommend a list of tree species for planting on town property, and a list of species to be discouraged from planting on town property;
- H. Other duties that may be assigned by the Town Council

The Tree Board shall meet a minimum of four times each year. All meetings shall be open to the public. The Tree Board chair may schedule additional meetings as needed; a quorum is required to make decisions.

SECTION 6: OPERATIONS

The Tree Board shall choose its own officers, make its own rules and regulations, and keep minutes of its proceedings. A majority of the members shall be a quorum for the transaction of business.

SECTION 7: COORDINATION AMONG TOWN DEPARTMENTS

On matters concerning trees on town property, all town departments will coordinate as necessary with the Tree Board and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements, and other public properties not under the direct jurisdiction of the Tree Board.

SECTION 8: TREE PLANTING AND CARE STANDARDS

- A. Standards: All planting and maintenance of public trees shall conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and shall follow all tree care "Best Management Practices (BMPs)" published by the International Society of Arboriculture.
- B. Requirements of franchise utility companies: The maintenance of public trees for utility clearance shall conform to A-300 standards.
- C. Spacing: Small trees shall be planted a minimum of 30 feet apart; medium trees shall be planted a minimum of 40 feet apart; large trees shall be planted a minimum of 50 feet apart, except in special plantings designed or approved by the Tree Board.
- D. Distances from curb and sidewalk: No trees may be planted closer to any curb or sidewalk than the following: small trees, 2 feet; medium trees, 3 feet; and large trees, 4 feet.
- E. Distance from Street Corners and Fireplugs: No street tree shall be planted closer than 35 feet of any street corner, measured from the nearest intersecting curbs or curb lines. No street tree shall be planted closer than 10 feet of any fireplug.
- F. Utilities: No street trees may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility.
- G. Public Tree Care: The town shall have the right to plant, prune, maintain and remove trees, plants, and shrubs within the lines of all streets, alleys, avenues,

lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

- H. The Tree Board may remove or cause or order to be removed, any town tree or part thereof which is in an unsafe condition, or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest.
- I. Pruning, Corner Clearance: WV law¹ requires private landowners to remove trees or to prune limbs or shrubs so that such branches shall not obstruct the light from any street lamp, or obstruct the view of any street intersection and so that there shall be a clear space of eight feet (8') above the surface of a street or sidewalk.
- J. The Tree Board will work with landowners to help them avoid potential liability. The Tree Board shall inform owners by certified mail of any tree overhanging any street or right-of-way within the town, and shall require the owner to prune the branches. The owner of the tree may give written permission to the Tree Board to prune said branches if possible. The owner may give the Tree Board permission to secure an estimate from a qualifying tree removal company to remove large limbs. The cost of having said limbs removed is the responsibility of the landowner; where possible the Tree Board may provide limited financial assistance.

SECTION 9: INTERFERENCE WITH TREE BOARD WORKERS

It shall be unlawful for any person to prevent, delay or interfere with the City Tree Board, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any Street Trees, Park Trees, as authorized in this ordinance. It shall be unlawful to interfere when the Tree Board has a written partnership with a business or property owner to undertake these activities.

SECTION 10: PROHIBITION AGAINST HARMING PUBLIC TREES

It shall be unlawful for any person, firm, or corporation to damage, remove, or cause the damage or removal of a tree or shrub on town property without written permission from the Tree Board and the Town Council. Should a tree be illegally

¹ Under West Virginia Code, Chapter 17, Roads and Highways, "Obstructions within the meaning of this chapter, shall include trees which have been cut or have fallen either of adjacent land or within the bounds of a public road in such a matter as to interfere with travel thereon; limbs of trees which have fallen within a public road or branches of trees overhanging the same so as to interfere with travel...Such obstructions shall be considered within the bounds of any state or county-district road whenever any part thereof shall occupy any part of the right-of-way provided law or acquired for road purposes....

Those persons who damage or destroy trees on town property shall be charged under section WV Code 61, Crimes Against Property.

removed, the town may replace the tree and charge the cost to the person who removed the tree.

It shall be unlawful for any person, firm, or corporation to attach any cable, wire, sign, or any other object to any street, park, or public tree.

It shall be unlawful for any person, firm, or corporation to “top” any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical may be exempted from this provision at the determination of the Tree Steward. Should a tree be illegally topped, the town may replace the tree and charge the cost involved to the person who removed the tree.

Any person, firm or corporation, or city department performing construction near any public tree(s) shall consult with the Tree Board and shall employ appropriate measures to protect the tree(s) according to procedures contained in the Best Management Practices (BMPs) for Managing Trees During Construction, published by the International Society of Arboriculture.

SECTION 11: ENFORCEMENT

The Town of Bath shall have the power to enforce rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon right-of-way of any street, alley, sidewalk or other public space in the Town.

SECTION 12: PENALTIES

Violations: Any person who violates any provision of this article or who fails to comply with any notice issued pursuant to provisions of the article, upon being found guilty of violation, shall be subject to a fine not to exceed one hundred dollars (\$100) for each separate offense. Each day during which any violation of any provision of this article shall occur or continue shall be a separate offense. If, as a result of the violation of any provision of this article, the injury, mutilation, death of a tree, shrub or other plant located on Town owned property is caused, the cost of repair or replacement of such tree, shrub or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with *The Town of Bath Tree Inventory and Management Plan, June 2023*.

Assignment of Claim: In the event a nuisance is not abated by the date specified in the notice, the Town is authorized to cause the abatement of such nuisance. The reasonable cost of such abatement shall be filed as a lien against the property upon which the nuisance was located. In addition, the owner of the property upon which the nuisance was located shall be subject to prosecution.

Appeals: All hearings shall be open to the public. The appellant or Tree Board and any person whose interests are affected shall be given an opportunity to be heard before the Town of Bath Town Council. The procedures shall not require compliance with strict rules or evidence, but shall mandate that only relevant information be received. Council shall render its decision within thirty days.

SECTION 13: REVIEW BY THE TOWN COUNCIL

The Town Council shall have the right to review the conduct, acts and decisions of the Tree Board.

First Reading _____

Second Reading _____

Adopted _____

Mayor _____

Date _____

Recorder _____

Date _____

**Status of Streetscape, State Park and NBRT Projects for Town Council
Tuesday – November 21, 2023**

STREETSCAPE

Phase V: Design & Construction

- The Funding Agreement for Phase V Construction was approved by the Finance Committee and the Town Council completed the Resolution required by DOH. The Mayor signed the DOH Funding Agreement package and this was sent to DOH along with the Town Check for the Cash Match

Phase VI Design Grant Application:

- Streetscape Committee discussed lighting plans and adjustment to the contents of the planned Phase VI project to accommodate current fiscal situation and to try to get lighting into the final Phase VI project. Town has not yet advised if it will be awarded a TA Grant for design of this project. Grant Application was submitted in June 2023.

Berkeley Springs State Park Project

• **Current Issues:**

The Town received an October 27, 2023 Notice of Violation (NoV) from WV-DEP. According to the date that package was stamped at the original Post Office – it was mailed to the Town on November 15th. Three violations were listed:

- Failed to report the spill into Warm Springs Run
- Distinctly visible floating or settleable solids, suspended solids scum, foam or oily slicks
- Distinctly visible color

A written response to the inspector was required within 20 days detailing the actions taken to abate this violation.

Status as of this afternoon:

- Copies of this NoV were distributed to Town Council on Monday afternoon (11-20-23). I got a copy Monday evening
 - I sent the NoV to DOH D5 and their on-site Rep (Josh White) later that night
 - The current DOH On-Site rep (Julie Hartman) also has the NoV and advised that the response was the responsibility of the DOH Contractor (Delauter) and that Delauter now had the NoV for action.
 - It is expected that Delauter and DOH will prepare the written response as required by the NoV
 - There will be an issue as to when the 20-day requirement will start. The 10-27-23 date on the NoV cannot be the start of the 20-day requirement when the mailing date of the certified letter to the Town was 11-15-2023. This info was sent to DOH at noon today – in order to rectify the actual due date.
 - The requirements as to Delauter's responsibility for erosion and sediment control are clearly spelled out in the solicitation and contract.
- **Current Status:**
- In advance of the expected rain, the Run has been cleared of sandbag cofferdams. The mortar repairs are essentially complete. The contractor also planned to remove the sediment control logs near the Fairfax St bridge.
 - The sidewalk color and stamping pattern were accepted by the Park and Park Foundation on Monday. The sidewalk forms are in place and the contractor is expected to begin the pouring and stamping in the next few days.
 - The abutments for the new southside bridge are in place and the stone/mortar wall areas at the abutments are complete

NBRT

- Nothing new to report on the NBRT Design/Build Solicitation by DOH. The official Letting date is still December 12, 2023 – with a Construction completion date of March 28, 2025.

Parcel 1B Storm Water Management System

- Construction of the stormwater control facility is Complete.
- Project reports are in process to CBT in order to obtain funds for the upcoming segments of the project
- The system is stabilized for the winter. Landscaping contracts will be let in the next month, which will allow us to tap into the second tranche of grant funding.

Pete Brown
571-213-3687



Native Havens LLC
27 Powers Dr. Kearneysville, WV 25430
(302) 363-3045 // nativehavens@gmail.com // www.nativehavens.com

Town of Bath Depot Planting Project

Planting Design Proposal

11/10/23

Thank you for your interest in our Planting Design services. See below for proposal details.

Proposal for Planting Design

- a. **Scope:** The actual planting design area is approx. 3,000 sq ft. The planting area will include the Hugel mounds, the bioretention pond, and the perimeter on the west side of the dry streambed of about six feet wide.
- b. **Design Work = \$2,500**
 - Upon approval, Native Havens LLC will create a custom Ecological Landscape Design
 - The Base Mapping component will be minimal due to an overhead drone image provided by the client.
 - Please note: the overhead drone images are crucial to this fee structure. All aspects of the scope of the project listed above must be captured in these images.
 - Complete species list provided includes plant names, plant quantities, and recommended size at procurement.
 - Design review meeting up to 1.5-2 hr. (additional time, if required, to be billed at \$60/hr.)
 - Each of our designs are unique, comprised of at least 80-90% native species, and are based on years of experience and education in the fields of ecological and conservation landscaping.
 - Due to the complex nature of the planting design, major modifications and changes during the course of the design period may affect the timing and ultimate cost of the project. Therefore, we strongly recommend that the client's list of non-negotiable items is clearly defined in the New Client Questionnaire.
- c. **Optional for additional fees**
 - Plant procurement services (consultation and up to full procurement)

Project Summary:

Design Work = \$2,500

Total Project Cost = \$2,500

Signed/dated

(Client)

(Date)

Signed/dated

(Native Havens)

(Date)

27 Powers Dr. Kearneysville, WV 25430 // (302) 363-3045 // nativehavens@gmail.com // www.nativehavens.com

TOWN OF BATH *BSB*

EXPENDITURES AND ENCUMBRANCES

YEAR: 2023 2024

BATCH DATE 11/21/2023

Chart of account			AMOUNT	DESCRIPTION
400-650-800	U.S.BANK		\$4,416.91	P CARDS
400-641-800	TOB		\$800.00	RENT
400-634-800	TOB		\$1,700.00	ADMIN FEES
400-125-300	BSWW		\$27,581.00	RESERVE FOR DEBT
400-125-200	BSWW		\$2,205.83	REPAIR & REPLACE
400-125-100	BSWW		\$1,500.00	DEPRECIATION
400-675-600	TOB		\$354.96	EMPLOYEE PAID BEN
400-672-200	BIEDLER'S ELECTRIC		\$42.00	PUMP INSPECTION - PLANT
400-675-600	MISS UTILITY		\$26.35	MESSAGES
		Totals:	\$ 38,627.05	

GREENWAY					
EXPENDITURES AND ENCUMBRANCES					
		YEAR:	2024		
BATCH DATE					
Chart of account					
14 230 000 00	MRB Enterprises		\$ 5,600.00	Mausoleum Deposit	\$ 14,000.00

STREETSCAPES					
EXPENDITURES AND ENCUMBRANCES					
	BATCH DATE	YEAR:	2024		
	Chart of account			AMOUNT	DESCRIPTION
					Account Balance
	1 950 000 00	WVDOH	\$ 106,999.25	Phase V Town Match	\$ 130,251.27
	Totals:		\$ 106,999.25		

EXPENDITURES AND ENCUMBRANCES					
	BATCH DATE	YEAR:	2024		
	Chart of account			AMOUNT	DESCRIPTION
					Account Balance
	1 950 000 00	WVDOH	\$ 106,999.25	Phase V Town Match	\$ 130,251.27
		Totals:	\$ 106,999.25		

