

# KNOX COUNTY COMMISSION

**Regular Meeting**

**Tuesday – August 13, 2013 – 2:00 p.m.**

The regular monthly meeting of the Knox County Commission was held on Tuesday, August 13, 2013, at 2:00 p.m., at the county courthouse, 62 Union Street, Rockland, Maine.

Attendance for this portion of the meeting:

Commission members present were: Carol L. Maines, Commissioner District #1, and Roger A. Moody, Commissioner District #3. *Commissioners not present: Richard L. Parent, Jr., Commissioner District #2.*

County staff present included: County Administrator Andrew Hart, Administrative Assistant Candice Richards, Finance Director Kathy Robinson (*left at 3:12 p.m.*), and EMA Director Ray Sisk (*left at 2:40 p.m.*).

Others in attendance: Steve Betts of the *Bangor Daily News* (*left at 2:34 p.m.*).

## **Regular Meeting – Agenda** **Tuesday – August 13, 2013 – 2:00 p.m.**

**REVISED**

- I. 2:00 Meeting Called To Order**
- II. 2:01 Public Comment** - Public Comment during other portions of the meeting will only be granted by permission of the chair.
- III. 2:15 Consent Items**
  - 1. Approve Consent Items as Presented:
    - i. Agenda - Non Agenda Items Only Permitted if Emergency in Nature.
    - ii. Minutes of Regular Commission Meeting of July 9, 2013.
    - iii. Minutes of Special Commission Meeting – Public Hearing - of July 25, 2013.
    - iv. Minutes of Joint Quarterly Budget Meeting of July 25, 2013.
    - v. Minutes of Special Commission Meeting – Work Session – of July 26, 2013.
    - vi. Monthly Written Departmental Reports.
    - vii. Reserve Withdrawals.
    - viii. Budget Line Transfers.
- IV. 2:20 Action Items**
  - 1. Act to Approve the 2013 Knox County Emergency Operations Plan.
  - 2. Act to Approve the FFY-14 EMA Strategic Work Plan.
  - 3. Act on Appointment to the Knox County Budget Committee.
  - 4. Act to Award Exterior Trim Painting Bid.
  - 5. Act on Adoption of the Knox County 2014 Budget Process.
  - 6. Act to Approve the Amended Job Evaluation & Salary Administration Policy.
  - 7. Act to Approve and Sign an Amended Employment Contract for the County Administrator.
  - 8. Act to Authorize the County Administrator to Approve and Execute a Concessionaire's Agreement with Heather Steeves to Manage the Café in the Airport Terminal, Pending Bank Approval.
- V. 2:50 Discussion Items**
- VI. 3:05 Other Business**
- VII. Recess until 7:00 p.m.**
- VIII. 7:01 Action Item:**
  - 1. Act on Petition for Property Acquisition by Eminent Domain by Considering Adoption and Signing of a Return of Doings and Order and Filing of the Same with the County Administrator.
- IX. Adjourn**

**I. Meeting Called to Order**

Commission Chair Carol Maines called the regular meeting of the Knox County Commission to order at 2:00 p.m.

**II. Public Comment**

Commissioner Carol Maines asked for public comment. There was none.

**III. Consent Items**

1. Approve Consent Items as Presented:

- i. Agenda - Non Agenda Items Only Permitted if Emergency in Nature.
- ii. Minutes of Regular Commission Meeting of July 9, 2013.
- iii. Minutes of Special Commission Meeting – Public Hearing - of July 25, 2013.
- iv. Minutes of Joint Quarterly Budget Meeting of July 25, 2013.
- v. Minutes of Special Commission Meeting – Work Session – of July 26, 2013.
- vi. Monthly Written Departmental Reports.
- vii. Reserve Withdrawals

- A motion was made by Commissioner Roger Moody to approve the consent items as presented. The motion was seconded by Commissioner Carol Maines.

Commissioner Maines asked Administrator Hart if some of the budget line transfers were related to his having asked departments to cease spending because the County had already used up the Tax Anticipation Note money. Finance Director Robinson stated that the two things were unrelated; the budget line transfers are due to needs changing within the department since the start of the year. She added that the purpose of the reserve withdrawals was to take money from reserves to apply to the County’s cash flow until the tax money comes in during November. The County is also still waiting on expected revenues to come in.

Commissioner Maines asked, aren’t you going to need to draw off the accounts that you’re borrowing from? Finance Director Robinson responded that if that were to happen, money would be transferred back into the reserve to cover that.

Commissioner Maines expressed some confusion about the Airport Manager’s report in which he states that enplanements were down 14% in July, over the previous July, yet later in the report it says that aircraft movements (takeoffs and landings) were up by nearly 11%. Airport Manager Jeff Northgraves was not in attendance at the meeting; Administrator Hart said that he thought the increase in aircraft movements was actually because of Downeast Air having more activity.

Commissioner Moody asked why so much had to be transferred into the building maintenance heating line. Administrator Hart explained that the courthouse has had problems with the system all year. Finance Director Robinson added that it looked like a lot because it’s since the beginning of the year.

Commissioner Maines asked about Communications Director Linwood Lothrop’s report mentioning a problem with the battery backup. She asked why no one knew the backup system went on until the batteries eventually ran out. Administrator Hart explained that this is the older system so there is no warning to anybody that it’s switched to battery backup. The new system will be connected via IP and notify people when things happen.

- A vote was taken with all in favor.

**2013 Reserve Withdrawals:**

Airport Computer	461608-14600	\$452.02
Building	200008-12655	\$72,939.50
Courthouse Computer	200008-12660	\$1,272.78

DARE	300008-10070	\$458.91
Legal Expense	200008-12650	\$10,719.85
Probate Surcharge	200008-12750	\$682.50
	Total	\$86,525.56

**2013 Reserve Withdrawals (Transfer until tax revenue received):**

Contingency Expense	200008-12700	\$100,000.00
Courthouse Computer	200008-12660	\$57,800.00
Courthouse Renovations & Maintenance	200008-12680	\$151,200.00
Jail Capital, Renovations & Maintenance	861808-12820	\$84,000.00
Jail Professional Services	861808-12855	\$24,000.00
	Total	\$417,000.00

**2013 Budget Line Transfers:**

FROM:

TO:

**Airport**

Maintenance – PT	416003-53615	\$3,829	Administrative Assistant	416003-53613	\$2,074
Security Officers	416003-53711	\$2,920	Overtime	416003-53800	\$3,550
Meals	416004-54110	\$150	Printing	416004-54525	\$150
Lodging	416004-54115	\$700	Ground Maintenance	416004-54590	\$1,900
Liability Insurance	416004-54425	\$425	Building Repairs	416004-54595	\$3,500
Advertising	416004-54510	\$2,000	Heating Repair	416004-54610	\$165
Training & Seminars	416004-54545	\$650	Gas	416004-54650	\$2,000
Electricity	416004-54555	\$5,000	Heating Fuel	416005-55205	\$2,000
Water	416004-54565	\$400	Auto Supplies	416005-55310	\$1,500
Computer Repairs	416004-54585	\$25	Maintenance Supplies	416005-55325	\$500
Plumbing Repairs	416004-54615	\$25	Books, Subscriptions	416005-55505	\$185
Cleaning Supplies	416005-55315	\$800			
Copy Machine Supplies	416005-55345	\$150			
Fire Fighting Supplies	416005-55376	\$400			
Computer Supplies	416005-55385	\$25			
Small Tools	416005-55610	\$25			

**Building Maintenance**

Electricity	006004-54555	\$4,378	Heating Repair	006004-54610	\$10,543
Equipment Repairs	006004-54575	\$2,500	Gas, Oil, Grease	006004-54650	\$919
Building Repair	006004-54595	\$4,584			

**Building Maintenance – 301 Park Street**

Electricity	016004-54555	\$1,716	Electrical Repairs	016004-54600	\$1,569
Maintenance	016004-54592	\$2,500	Maintenance Supplies	016005-55325	\$2,500
			Signs	016005-55710	\$147

**Communications**

Dispatch Supervisor	518003-53811	\$5,360	Lodging	518004-54115	\$181
			Medical Exams	518004-54550	\$1,610
			Radio Console	518004-54915	\$3,500
			Heating Fuel	518005-55205	\$69

**Deeds**

Equipment Repairs	009004-54575	\$362	Resignation/Term	009003-53940	\$362
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**District Attorney**

Safety Supplies	003004-55305	\$75	Safety Supplies	003005-55305	\$75
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**Finance**

Meals	005004-54110	\$109	Other, Tolls, Fees	005004-54120	\$109
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**Jail**

Computers	818004-4604	\$1,781	Training	818005-5243	\$325
			Electrical	818007-7305	\$372
			Postage	818004-4815	\$84
			Building Structure	818004-4602	\$1,000

**Sheriff**

Health Insurance	011003-53910	\$10,354	Resignation/Term	011003-53940	\$8,332
			Computer Supplies	011005-55385	\$2,022

<b>Total:</b>	<b>\$51,243</b>
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<b>Total:</b>	<b>\$51,243</b>
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**IV. Action Items**

1. Act to Approve the 2013 Knox County Emergency Operations Plan.  
 This Plan had been reviewed in depth by the Commission at a Work Session on July 26<sup>th</sup>. EMA Director Ray Sisk gave them a couple revisions to swap out pages in the Commissioners’ hard copies.
  - A motion was made by Commissioner Roger Moody to approve the 2013 Knox County Emergency Operations Plan. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.
  
2. Act to Approve the FFY-14 EMA Strategic Work Plan.  
 EMA Director Sisk noted that it was a Federal requirement that the County have Strategic Work Plans. EMA has been working to acquire funding in the form of grants for various projects. Director Sisk briefly listed some projects currently being worked on as part of the Strategic Work Plan. The Commission had already discussed the Work Plan at the Work Session on July 26<sup>th</sup>.
  - A motion was made by Commissioner Roger Moody to approve the FFY-14 EMA Strategic Work Plan. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.
  
3. Act on Appointment to the Knox County Budget Committee.
  - A motion was made by Commissioner Roger Moody to appoint of Stephen Carroll to one of the vacant District 3 seats on the Knox County Budget Committee. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.
  
4. Act to Award Exterior Trim Painting Bid.  
 As explained at the July Commission meeting, the Administrative Office had originally gone out to bid in June. The only bid received arrived via e-mail, which did not meet the RFP requirements and was rejected. The County went out to bid a second time, receiving a single bid from McCormick & Associates. Administrator Hart recommended that the Commission reject the bid. He said that he had already notified Allen Mitchell of McCormick & Associates that it might be rejected so that the County could go out to bid next year when there is more time to do the project and have the opportunity for more companies to bid on it.

Commissioner Moody suggested sending the RFP to general contractors because if there’s damage that will require repair work, a general contractor could handle both aspects of it. Administrator Hart stated that his concern would be that if the contractor didn’t handle painting, they would use a subcontractor and the costs would go up.

- A motion was made by Commissioner Roger Moody to reject all bids for the exterior trim painting bid rebid in the spring. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.

5. Act on Adoption of the Knox County 2014 Budget Process.

The Commission had reviewed an earlier draft of this calendar with the Budget Committee on July 25<sup>th</sup>. A few dates have been changed with back-up dates added for the final votes and the public hearing depending on how many times the Committee and Commission end up needing to meet.

September 6, 2013	Friday		Department Heads' Operating Budgets due in to Finance Director
September 16, 2013 September 17, 2013 September 18, 2013 September 19, 2013 September 20, 2013	Monday Tuesday Wednesday Thursday Friday		Department Heads review their Budgets with Administrator & Finance Director
September 20, 2013	Friday		Formal Grant Requests due (including all necessary background info)
October 11, 2013	Friday		<i>Target date to have Budget Binder notebooks available for pick-up by the Commission and Budget Committee Members</i>
<b>October 24, 2013</b>	<b>Thursday</b>	<b>5:00 p.m.</b>	<b>PUBLIC HEARING Proposed Budget Presented to Commission &amp; Budget Committee; Commissioners submit budget to Budget Committee Budget Committee &amp; Commissioners Review Proposed Budget</b>
<b>October 31, 2013</b>	<b>Thursday</b>	<b>5:00 p.m.</b>	<b>Budget Committee &amp; Commissioners Review Proposed Budget</b>
<b>November 7, 2013</b>	<b>Thursday</b>	<b>5:00 p.m.</b>	<b>Budget Committee &amp; Commissioners Review Proposed Budget</b>
<b>November 14, 2013</b>	<b>Thursday</b>	<b>5:00 p.m.</b>	<b>Budget Committee &amp; Commissioners Review Proposed Budget</b>
<b>November 21, 2013</b>	<b>Thursday</b>	<b>5:00 p.m.</b>	<b>Budget Committee &amp; Commissioners Review Proposed Budget Final Review and Vote on Budget Proposal</b>
<i>November 25, 2013 November 28, 2013 December 2, 2013</i>	<i>Monday Thursday Monday</i>		<i>Submit Public Hearing Notice to Newspapers Public Hearing Notice Appears in Area Newspapers 10 days notice</i>
<b>November 26, 2013</b>	<b>Tuesday</b>	<b>5:00 p.m.</b>	<b>Budget Committee &amp; Commissioners Review Proposed Budget Final Review and Vote on Budget Proposal - only if necessary</b>
<i>December 2, 2013 December 5, 2013 December 9, 2013</i>	<i>Monday Thursday Monday</i>		<i>Submit Public Hearing Notice to Newspapers Public Hearing Notice Appears in Area Newspapers 10 days notice</i>
<b>December 12, 2013</b>	<b>Thursday</b>	<b>6:00 p.m.</b>	<b>Public Hearing - Presentation of 2014 Budget to the Public If Budget Receives Budget Committee and Commission Approval on November 21 Vote by Budget Committee; Budget submitted to Commission Vote by Commission; Budget Approved</b>
<b>OR</b>			
<b>December 19, 2013</b>	<b>Thursday</b>	<b>6:00 PM</b>	<b>Public Hearing - Presentation of 2014 Budget to the Public If Budget Receives Budget Committee and Commission Approval</b>

			on November 26 Vote by Budget Committee; Budget submitted to Commission Vote by Commission; Budget Approved
By December 31, 2013		Completed 2014 Budget submitted to the State Auditor	

Commissioner Moody asked when the Commission would review the budget since that’s not on the schedule. Administrator Hart stated that the Commission would need to have a Special Meeting to do that.

The commissioners then decided upon October 4, 2013 at 9:00 a.m. to hold a Special Meeting to review the budget draft with the department heads. The Commission would be given a copy of the budget draft to review before that.

- A motion was made by Commissioner Roger Moody to approve the Knox County 2014 Budget Process. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.

6. Act to Approve the Amended Job Evaluation & Salary Administration Policy.

Administrator Hart explained that the changes made relate to determining what Step newly hired employees will be placed on using closely-related prior experience. There were also a few other minor edits. Both commissioners said that they found the additional language confusing. Administrator Hart read aloud the edits from Page 4 of the policy, which is shown below with new text underlined and removed text crossed out:

**Value of Prior Experience**

1. Closely-related prior work experience, as determined by the Department Manager/Sheriff and the County Administrator, dating back 16 years (corresponding to 16 Steps in each salary range) will be counted at 50%. Prior related experience at Knox County, in the same time frame and in the same job classification, will be counted at 100%.
2. Experience will be calculated at the inception of the Job Evaluation and Salary Administration Program for all current employees. This calculation takes the prior related experience, calculated as described above, and places employees on the corresponding step based on the calculation (rounded up). For example, an employee with 5 years of prior related experience and 1 year of experience in the position at Knox County would be placed on Step 4 ( $5/2=2.5+1=3.5$ , which rounds up to 4).
3. The value of closely-related prior work experience for new employees hired between January 1, 2012 and June 8, 2013 will be calculated the same as outlined in #2 above. ~~as well at the time of hire for new employees.~~
4. In order to enhance the County's ability to attract the best qualified workforce, the value of closely-related prior work experience for new employees hired on or after June 9, 2013 will be modified as follows. Since a new employee with no closely-related prior experience is placed on step one, those new employees with at least one year of closely-related prior experience will be placed on a higher step (effectively, one step higher than the calculation in #3 above). For example, an employee with 8 years of closely-related prior work experience would start on Step 5 ( $8/2=4$ ; step one plus 4 equals step 5).

Both Administrator Hart and Finance Director Robinson gave examples of calculations to clarify the language.

- A motion was made by Commissioner Roger Moody to approve the amended Job Evaluation & Salary Administration Policy with the correction of one typo on Page 4. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.

7. Act to Approve and Sign an Amended Employment Contract for the County Administrator.  
Administrator Hart explained that the changes included the addition of seven personal days to Section V-Employee Benefits as discussed and agreed to by the Commission. He read aloud the new language:

Employee shall also be entitled to up to seven (7) personal days for each of the second and third years of this contract (these are in addition to the potential conversion of two (2) unused sick days to personal days allowed under the Personnel Policy for all employees).

- A motion was made by Commissioner Roger Moody to approve and sign the amended employment contract for the county administrator. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.

8. Act to Authorize the County Administrator to Approve and Execute a Concessionaire's Agreement with Heather Steeves to Manage the Café in the Airport Terminal, Pending Bank Approval.

Administrator Hart explained that Airport Manager Jeff Northgraves had notified him that Heather Steeves had not yet received bank approval at this time and had asked to be removed from the agenda.

- A motion was made by Commissioner Roger Moody to remove this action item from the agenda since no action needed to be taken. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.

## V. Discussion Items

## VI. Other Business

### MCCA Convention

Commissioner Moody reminded everyone that the MCCA Convention was coming up in early September at Sugarloaf, hosted by Franklin County.

### Jail Food Services

Commissioner Maines asked for an update. Administrator Hart stated that he had met with Food Service Manager Bruce Sheaff, Sheriff Dennison and Major Hinkley on August 7<sup>th</sup> to review Manager Sheaff's spreadsheets for savings on food costs that he had submitted. Finance Director Robinson is still reviewing those. The group will meet again on August 21<sup>st</sup>, this time with a rep from Aramark. He stated that if the County decides to go with Aramark, he would need Finance Director Robinson to project out three to five years to see what it's going to cost the County. He said that he was leaning towards bringing the awarding of the bid/contract back to the Commission because he felt it had gotten more political than he expected and has been in the press. He added that County staff are taking the time to figure this out and will not make a rash decision. Commissioner Maines asked to be kept informed of the developments.

### Jail Medical Services

Administrator Hart explained that the County used to have a contract with ARCH for medical services. One of the individuals who had been part of ARCH went out on his own and started MIHS (Maine Inmate Health Services). MIHS is currently doing the medical services at the jail. The contract with MIHS was extended until the end of December to give the County time to get out the RFP and review the bids when they come back. The RFP was sent out to 26 vendors. He added that he hoped to bring the matter to the Commission to award the bid at the November Commission meeting.

### Land Next to 301 Park Street

Commissioner Moody asked what was happening with the additional land. Administrator Hart responded that the owner is selling the property to someone and was not interested in hearing what kind of offer the County might make.

**VII. Recess until 7:00 p.m.**

- A motion was made by Commissioner Roger Moody to recess until 7 p.m. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.

The meeting was recessed at 3:23 p.m.

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The meeting was reconvened at 7:01 p.m.

Commission members present were: Carol L. Maines, Commissioner District #1, and Roger A. Moody, Commissioner District #3. *Commissioners not present: Richard L. Parent, Jr., Commissioner District #2 (arrived at 8:05 p.m. after testimony had already been completed).*

County staff present included: County Administrator Andrew Hart, Administrative Assistant Candice Richards, and Airport Manager Jeff Northgraves.

Others in attendance: Attorney Wayne Crandall, representing the Pollards; Leland Buzzell, Review Appraiser; and Steve Betts of the *Bangor Daily News*.

**VIII. Action Item**

1. Act on Petition for Property Acquisition by Eminent Domain by Considering Adoption and Signing of a Return of Doings and Order and Filing the Same with the County Administrator. Commissioner Maines noted that this portion of the meeting was to act on the petition by Jeffrey Northgraves and William E. O'Brien for property acquisition by eminent domain pursuant to 6 M.R.S.A § 121 *et seq.* and 23 M.R.S.A. § 2051 *et seq.* She asked to hear what developments have taken place since the hearing on July 25<sup>th</sup>.

Airport Manager Jeff Northgraves stated that both Mr. Benner and Mr. Williams had accepted the negotiated administrative settlements. Both the FAA and the Review Appraiser determined that the last offer made by the County was, in fact, the fair market value. The FAA authorized the County to do administrative settlements, which do not impact the fair market value in these easements; it's only an administrative settlement to keep the County from needing to take more legal action. That offer was made to all three property owners, as well as to the fourth property holdout. Mr. Benner, Mr. Williams, and Mr. Vanorse have all accepted so those three properties will not need to be included in these proceedings. The Pollard property is the last remaining property. Mr. Buzzell and the FAA have reviewed the Pollard appraisal but both determined that the Pollards' appraisal did not substantiate any increase in the value of the easement. The offer remains at \$15,000.

Commissioner Maines asked Review Appraiser Mr. Buzzell to come forward to talk about his review of the Pollards' appraisal.

Leland Buzzell introduced himself as an appraiser with Buzzell Associates located in Gorham, Maine. He explained that he had received a copy of the Pollard appraisal on August 1<sup>st</sup>. He said that he was aware of some of the comparables because he had done some field work on July 29<sup>th</sup> but just hadn't received the report yet. He concluded that the information in the appraisal did not meet any of the tests that are typically required when you're doing a before and after analysis and estimation of the easement. He added that he saw nothing in the Pollards' appraisal to support anything different from his own appraisal presented at the July 25<sup>th</sup> hearing.

Commissioner Maines asked if the Pollards or their attorney had seen Mr. Buzzell's letter of August 7<sup>th</sup> to Ms. Janice Bland of Stantec. Attorney Crandall stated that he represents the Pollards and that he had seen the letter.

Commissioner Maines noted that according to Mr. Buzzell's letter, the Paton Agency had used the same comparables for all four of the properties: Pollard, Benner, Williams, and Vanorse. She asked if this was correct. Mr. Buzzell said yes.

Commissioner Maines then asked what difficulties, if any, did Mr. Buzzell find with the way that Mr. Paton used those comparables. Mr. Buzzell stated that the after value was in essence supported by one comparable. The before value was arrived at using two comparables. Using these comparables, Mr. Paton came up with a before value, after value, and an easement value. The sale that was used for the after value was the property on Philbrook Lane that had been impacted by an easement a number of years ago. That property had been sitting in a state of foreclosure for about 7 years before it was sold. Mr. Buzzell said that the real estate broker involved in the sale after the foreclosure had described the property much as he would, that it was in rough condition and needed a number of repairs, renovating and updating since it had sat vacant for an extensive period of time. The asking price on the property had been lowered significantly before it sold. Using a foreclosed or foreclosure-style property as a comparable is questionable because there are so many variables and ramifications with that type of a sale process. The condition of the property would have adjusted the after value and would have reduced the amount of an easement impact.

Commissioner Maines asked if Mr. Paton's appraisal made some adjustments for the fact that it was a foreclosure and in poor condition. Mr. Buzzell responded no; he said that Mr. Paton's report said the property was in average condition, which is inaccurate, and did not make any adjustment for the fact that the property was in foreclosure.

Commissioner Maines asked about the two before comparables in the Paton appraisal. Mr. Buzzell responded that the before comparables were adjusted for location and yet both of those properties are within relatively close proximity to the airport. He said that you really need to look at an area not impacted at all by the airport location if that's going to be your base. If you're making an adjustment for location, then your before comparables need to have no influence from an airport. The two comparables used by Mr. Paton are near the airport. Commissioner Maines asked if the two properties already had aviation easements on them; Mr. Buzzell said no.

Mr. Buzzell showed the two commissioners and Attorney Crandall two maps in order to show the proximity of the comparables to the airport.

Commissioner Maines asked if Mr. Buzzell had used any of the three comparables used by Mr. Paton when Mr. Buzzell had done his review appraisal back in October of 2012. Mr. Buzzell stated that he had looked at the property on Philbrook Lane but that it had just closed as a sale so there was no hard data on the sale readily available. There was some hearsay on how much it had actually sold for, but he didn't have confirmed data that could be used for an appraisal.

Attorney Crandall asked Mr. Buzzell if he had used any other Knox County properties as comparables to determine after value. Mr. Buzzell responded that there were a number of Knox County properties that he used. He said that he had used the sales approach. There had been a binder of sales from Knox County that had been put together when the initial project was done, and that is what he used.

Commissioner Maines expressed some confusion over the two comparables used for the before value by the Paton appraisal. She noted that the properties do not have easements on them but are clearly impacted by their proximity to the airport. Mr. Buzzell stated that Mr. Paton had used a 10% location adjustment on those two properties because Mr. Paton felt that those properties were not affected by a proximity to the airport like the subject property was. Mr. Buzzell stated that the next problem is that when you look at the value of the easement that Mr. Paton places on the property, Mr. Paton gave an almost 20% adjustment with no explanation for how he got there.

Commissioner Maines commented that Mr. Paton was not present to address this.

Attorney Crandall agreed that Mr. Paton was not present, but he noted that he had sent Mr. Buzzell's letter to Mr. Paton, who then provided a written rebuttal that Attorney Crandall wished to present to the Commission. He then handed out copies to the commissioners and to Administrator Hart. Commissioner Maines asked him to also give a copy to Mr. Buzzell.

Attorney Crandall said that he would summarize Mr. Paton's letter. He stated that Commissioner Maines had hit the nail on the head with her question about the use of the comparables that are influenced by, but not the subject of, an avigation easement. He stated that Mr. Paton's letter makes it clear that he felt that the property would be an appropriate comparable in order to determine before value.

Commissioner Maines asked for clarification on the issue of the difference between the 10% adjustment and the Pollard property ending up with a 19% adjustment. Her question went unanswered.

Attorney Crandall asked to make a presentation. He put up a large plan on the easel that he said showed the exact location of the avigation easement and its proximity to the runway. He stated that black lines on the plan represented the approach surface to the runway. He pointed out the end of the runway and its immediate proximity to the area being dealt with. He also pointed out the approach surface. 16 Philbrook Avenue is the foreclosed property that was used as a comparable. He then pointed out the subject property owned by the Pollards, and the property next to it formerly owned by the Fullertons. He stated that the center line of the glide slope goes right through the Pollard property. If an aircraft is making an instrument landing approach, and it is trying to center itself on the runway, it is flying virtually over the very top of the Pollard property. It was very nearly approaching over the top of the Fullerton property that was involved in the court case about 20 years ago. He stated that he had reviewed Mr. Buzzell's appraisal of the Fullerton's property in 1992. The damages Mr. Buzzell came up with for the property right next to the Pollards was \$35,000. Attorney Crandall referred to page 49 of Mr. Buzzell's 1992 appraisal and read verbatim the first and last sentence of the paragraph he had circled:

*As no reliable basis of measurement was found to assist in estimating the effect of the avigation and hazard easement has had on the subject remainder, the appraiser has primarily relied on a qualitative estimate...Based partially on these premises and giving consideration to the previously discussed effects of the avigation and hazard easement, it is the opinion of the appraiser that 20% downward adjustment in the overall utility and desirability of the subject remainder is realistic and appropriate.*

Attorney Crandall stated that Mr. Buzzell's appraisal was saying that whatever market value you arrive at to begin with, the easement lowers the value of the property by 20%.

Commissioner Maines commented that since 1992 there would have been plenty of other comparables to use.

Attorney Crandall responded by saying that he disagreed with Mr. Buzzell's statement that he has several comparables in Knox County relating to the after value of an avigation easement because there has only been one other avigation easement taken in Knox County in the last twenty years – 16 Philbrook Avenue. He said that he would admit that there have been some negotiations in connection with these properties, but he said that he was having considerable difficulty in reconciling Mr. Buzzell's 20% downward adjustment in 1992. That was not deemed acceptable by the owner at the time and the matter went to court. In current situation, the offer by the County is \$15,000, which is a far cry from the 20% Mr. Buzzell is speculating on in the case of the 1992 avigation easement. This is the only other avigation easement in Knox County, which is why Stanley Paton used 16 Philbrook Avenue, because it's the only other avigation easement that was taken.

Commissioner Maines pointed out that there are other avigation easements all over the area; the 16 Philbrook Avenue easement was just the only *contested* one.

Airport Manager Jeff Northgraves stated that Commissioner Maines was correct. There are a lot of properties surrounding the airport that have easements. There were a bunch of properties that received easements at the same time as the Fullerton property in 1992. He explained that, as it says right in the 1992 appraisal by Mr. Buzzell, the easements at that time were not just for cutting trees – they were also for the aircraft noise and the residential property values that are impacted by the approach. In 1992 they were talking about putting in the Instrument Landing approach that did not exist at the time and all of this was changing how aircraft were going to land at the airport. Right now, in 2013, the airport is not changing a thing. The easements are strictly to cut trees and will not impact how the pilots fly in and out of the airport in any way. Regardless of whether the property is centerline or close to centerline, it doesn't matter – it doesn't have any impact on the easement because neither the runway nor the approach is being changed. In 1992, that definitely was a factor because of the approach being changed, which had a significant impact on those properties. The values weren't just lowered because of the avigation easement – it was because of all those other factors associated with the change at the airport (noise, etc.). The situation today is simply an avigation easement to go onto the property to cut trees to clear the approach that has been there for 20 years already.

Commissioner Maines asked for Manager Northgraves' response to Attorney Crandall saying that there were no other properties besides 16 Philbrook Lane with an avigation easement in the last 20 years. Manager Northgraves responded that that was absolutely not true. He said there were not only lots of other properties with avigation easements, but there were also other properties taken by eminent domain at the same time as the Fullerton property; the Fullertons just ended up being the only property owners to go to court. It doesn't matter whether the property was taken by eminent domain or negotiated – the property will still have an easement on it. In the end, the County had ended up purchasing the Fullerton property, both the land and the structure sitting on it, and then resold it with an easement in place.

Mr. Buzzell stated that Manager Northgraves was correct: the original project in 1992 was a completely different project than from what is being done now. There was a Master Plan that was in the original appraisal that heavily dictated the project and was completely different from the current project.

Commissioner Moody asked if an easement was acquired on the Pollard property in 1992 since it was next to the Fullerton property. Manager Northgraves responded that in 1992, there was no reason to have an easement on the Pollard property because there were no trees even close to penetrating the approach surface. Mr. Buzzell commented that you end up with a quilt approach; some properties will have easements while others may not, even if they're right next to each other. It all depends on if that property has penetrations at that time or not.

Manager Northgraves added that as far as buildings go, there is already a federal law that if you're going to construct a building within 20,000 feet of a runway, you have to go to the FAA and say that you are putting a building up or increasing the height of one already there and get permission. The Pollard property is within 20,000 feet of the runway so this federal law already applies to that property. The FAA needs to make sure the building either doesn't penetrate or can be appropriately lit so that the penetration would be included on the approach. The County is obliged to go out every so often and look at the trees on the surrounding properties to see if there are any potential penetrations, which is what was done four years ago.

Attorney Crandall said he disagreed with Manager Northgraves' representation of the nature of the easement that's being requested for the property. He read verbatim from a portion of the Pollard easement, starting with the third paragraph:

*The easement and right of way shall be defined to include the following: The airspace above the Grantors' property to an infinite height above the approach surface of said Grantors' property...The portion of the Grantors' property to be conveyed to the Grantee is considered to be encompassed within the boundaries of the approach surface. Height restrictions range from 45 to 70 feet in the...approach surface.*

Attorney Crandall stated that would acknowledge that it does include the right to cut trees but it also includes:

*...the right to cause in all airspace above the...Grantors' property...noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on said Knox County Regional Airport.*

Attorney Crandall said that there is also a waiver of any cause of action:

*...due to noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operations of aircraft landing...*

Attorney Crandall stated that this was a great deal more, in his view, than just the right to cut trees. It also applies within 45 feet of the ground. There is a two-story building on the property, which is right in the middle of the glide slope.

Commissioner Maines commented that it was 45 to 70 feet, because presumably the property has some contours.

Attorney Crandall replied that the contours of the property are roughly the same as the Fullerton property. He stated that this matter can be resolved. He said that he felt his client was entitled to receive the valuation that he has obtained from Mr. Paton based on a fair market value approach. Stanley Paton has been appraising property for about 40 or 50 years in Knox County. Attorney Crandall asked the commissioners to consider what their view of the damage would be flowing from the aircraft, hurtling through space, roughly 20 feet above your house in the fog, with the noise. He said that from his way of thinking, it would be much more than what the County offered. He felt that the 20% factor was an appropriate factor because of planes flying at such a low elevation over the property in the fog. He asked the Commission to reject the value on the Pollard property given to it by Mr. Buzzell and determine that the damages are \$30,000.

Manager Northgraves asked to speak again. He stated that whether the County gets this easement or not, aircraft have been flying at those altitudes for the past 20 years, and will continue to do so, with or without an easement. This aviation easement has nothing to do with aircraft hurtling through space. The fact that aircraft are flying through the fog isn't relevant because when it's foggy, the aircraft fly above 250 feet, because those are the minimums, *not* 45 to 70. The only time a pilot is going to be 50 feet above is if he's doing a very shallow approach and can see the runway. They're probably not even going to do that because pilots are not comfortable doing an approach that shallow. This easement doesn't change anything about the flight path, how close the aircraft comes to the ground, or change what the pilots have permission to do. None of that has changed since 1992.

Commissioner Maines commented that the space above every property is already owned by the FAA.

Manager Northgraves noted that the nuisance language in the easement about aircraft fumes, etc. is standard FAA language and it is an implied easement on all properties within 20,000 feet of an airport. Whenever the FAA does an easement for cutting trees, they put that language in there so that 20 years down the road, anybody thinking about purchasing the property sight unseen will see it in the deed and know that those conditions already exist. It's nothing that doesn't already exist. Within 20,000 feet of a

runway, anything above 20 feet has to be approved by the FAA anyway. The land is already above that. This easement adds nothing to buildings or towers, just trees.

Attorney Crandall stated that he didn't agree with that. He asked to read a portion of Mr. Buzzell's appraisal from 1992, page 48:

*The property is also subjected to associated disturbances of flying aircraft which may be identified as noise, proximity of flight and hazard and potential lack of compatibility with future uses of the property. A further and fairly intangible effect of the avigation and hazard easement on the subject property is the conceivable reluctance of future potential buyers to negotiate with the property owner or a reluctance to pay the considered full Market Value because of the actual and legal implications of the easement itself. The lack of sophistication of potential buyers regarding an avigation and hazard easement and its implications tends to lower the acceptability of the subject property in the real estate market.*

Attorney Crandall stated that this was an observation made by Mr. Buzzell in 1992 and it is just as true today as it was 20 years ago.

Commissioner Maines commented that Mr. Buzzell had put a dollar amount on that reduction. She asked if that was correct. Mr. Buzzell responded yes, but added that it was a totally different circumstance. He said that his observations in the 1992 appraisal were based on the fact that the easement was part of a safety project. The current project is only talking about cutting trees.

Airport Manager Northgraves noted that there are three different kinds of easements:

1. Avigation easement – the current project
2. Hazard easement – the 1992 project involved changing the approach, which increased the risk to property owners
3. Assumed Nuisance easement – relating to complaints from living near the airport

Manager Northgraves stated that for 20 years that approach has already existed. Knox County is not doing a hazard easement right now because the approach is not being changed. It is simply an avigation easement. He added that it was too late to complain about aircraft flying over a house because aircraft have already been doing it for 20 years.

Commissioner Maines asked about changing the draft of the Order to remove the Benner and Williams properties since they had settled since the public hearing. Administrator Hart explained that he actually had a revised Return of Doings and Order from Attorney Jim Katsiaficas that will only do a taking on the Pollard property. He read aloud a portion of Page 4:

- A. *Dismiss the Petition as against Jason A. Benner and Michelle L. Benner and as against Kenneth D. Williams and Glennice E. Williams, since they have reached agreement with Knox County over the amounts of damages to be paid by Knox County for its acquisition of avigation easements over their properties; and*
- B. *Take perpetual avigation easements over the lands in South Thomaston, Knox County, Maine as described in Attachment A to the Petition, which also is attached hereto. Based upon the testimony of Mr. Buzzell, the Commissioners determine that the damages or amount of just compensation to be paid to the affected landowners for the taking of these avigation easement interests to be the following, as stated below and in the attached Attachment A:*

*David C. Pollard and Carol A. Pollard (Property owners), Damages Due to Avigation Easement: the sum of Fifteen Thousand Dollars (\$15,000.00);*

Commissioner Maines commented that she thought the Order should also reference the additional evidence and testimony given today by Attorney Crandall. Administrator Hart noted that if any text

was going to be added to the document, the signature lines would get moved so the Commission wouldn't be able to sign the hard copy of the document today.

Commissioner Moody asked if the settlements/final offers with the other owners were still confidential. Airport Manager Northgraves stated that this was correct. He stated that the values of the properties are still the amounts in the Buzzell appraisals, but the FAA did authorize an administrative settlement above that. These administrative settlements do not in any way change the fair market value of the properties, but are given, essentially, to settle out of court. It is the responsibility of the Commission to arrive at the fair market value for the Pollard property, which is \$15,000.

- A motion was made by Commissioner Roger Moody to adopt the Return of Doings and Order as drafted by Attorney James Katsiaficas on behalf of Knox County and find the damages due to David C. and Carol A. Pollard for an avigation easement to be in the amount of \$15,000 based on the fair market value. The motion was seconded by Commissioner Carol Maines.

Commissioner Moody commented that part of his opinion was formed by the fact that Mr. Buzzell's review appraisal was accepted by the other property owners and the FAA. He felt that Mr. Buzzell's expertise was validated by the acceptance of the easements.

*Commissioner Parent arrived at 8:05 p.m.*

Commissioner Maines said that while she was interested to see the additional evidence presented by Attorney Crandall, she was convinced of a couple of things: 1) the 1992 appraisal document, although interesting, addresses a different issue, and 2) she was also convinced that there is a problem with the comparables used in the Paton appraisal and the way that the appraiser weighted those.

Commissioner Parent commented that he probably shouldn't vote since he'd missed the whole rest of the meeting, including the testimony given and the discussion. Commissioner Maines agreed that was probably best.

Commissioner Maines explained that after today's meeting, there would be an appeal period for property owners to take their appeal to Superior Court on the issue of whether the taking is lawful or on the damages. The statutes are confusing on the length of the appeal period.

- A vote was taken with two in favor (Commissioners Maines and Moody), and one abstention (Commissioner Parent).

Commissioner Maines explained that after the Commission signed the Return of Doings and Order, it would be left with the county administrator until the end of the 30-day appeal period. If no appeal is filed during those 30 days, the Order will be recorded in the Registry of Deeds.

Administrator Hart commented that the warrant would also then need to be approved for payment of damages. He read aloud from the memo from Attorney Katsiaficas to the Commission:

*...the Commissioners' regular September meeting will precede the expiration of the 30-day appeal period, and will allow the Commissioners to approve a warrant for payment of those damages upon expiration of the 30-day appeal period.*

Commissioner Maines noted that Commissioner Parent's signature line on the Order would be left blank since he did not participate in the vote.

## **IX. Adjourn**

- A motion was made by Commissioner Roger Moody to adjourn the meeting. The motion was seconded by Commissioner Carol Maines. A vote was taken with all in favor.

The meeting adjourned at 8:06 p.m.

Respectfully submitted,

Candice Richards  
Administrative Assistant

**The Knox County Commission approved these minutes at their regular meeting held on September 10, 2012.**