

--APPROVED--
BRUNSWICK TOWN COUNCIL
MINUTES
February 5, 2007
6:30 P.M. Executive Session
7:00 P.M. Meeting Continues
Municipal Meeting Facility

Councilors Present: Chair Joanne T. King, W. David Watson, Jacqueline A. Sartoris, Hallie Daughtry, Jeffrey A. Schneider, Gerald E. Favreau, Ryan E. Ewing, Newell A. Augur, and David C. Webb

Councilors Absent: None

Town Staff Present: Donald Gerrish, Town Manager; Fran Smith, Town Clerk; Mary Reindl, Director of Human Services; John Eldridge, Finance Director; John Foster, Public Works Director; Craig Worth, Deputy Director of Public Works; Tom Farrell, Director of Parks and Recreation Department; Peter Baecher, Facilities Manager for Parks and Recreation Department; Kevin Schofield, Police Commander; and the TV video crew.

Executive Session: Poverty Tax Abatement per 1 M.R.S.A. §405(6)(F)

Councilor Daughtry moved, Councilor Augur seconded, to go into executive session to discuss a Poverty Tax Abatement per 1 M.R.S.A. §405(6)(F). The motion carried with six (6) yeas. Councilor Sartoris, Councilor Ewing, and Councilor Webb arrived after the vote.

Meeting Continued: 7:00 P.M.

Chair King called for the Pledge of Allegiance.

Public Comment:

Pem Schaeffer, 90 Crestview Lane, read a statement about a variety of items including pay-per-bag, the budget process, and the teachers' contract.

(A copy of Mr. Schaeffer's comments will be attached to the official minutes.)

Fred Blanchard, 638 Harpswell Road, said he had made comments on the cost of solid waste disposal at an earlier meeting and he wanted to recap them. The budgeted amount in 2002 was \$132,000 for solid waste, and in 2004, when the town went to a private hauler, that amount increased to over \$600,000. The reason given was to put money aside for the landfill closure, but the contractor received the \$600,000, and a fund was put together for the landfill. This year the amount is \$730,000 for the contractor, with no funds for the enterprise fund. There is \$2 million in an IOU for that fund. If this lack of funding was not done with the Council's permission, then it could be in violation of Section 508 of the Town Charter and Title 30-A when it comes to diversion of funds.

Richard Morrell, 12 Boody Street, said he hopes when the Council gets to the budget, they will set aside the bag revenues into a dedicated fund for the landfill closure.

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Ben Swan, 4 Page Street, said he is losing faith in the representatives who are running this town. Last week the Council voted to give away a parcel of land that has the People Plus Center on it. He came to the meeting because he read about it in the Portland newspaper. Mr. Lowe and the developer said this is a preliminary thing, and there would be tons of input from the public. Mr. Swan said he later realized that decisions were being made, and that the piece of property was being given away by the town. He followed up and was told it was made public, but he begs to differ since many did not know it was happening. It was not a willful deception, but people were sandbagged. He thought the site might not be developed as he wanted, but it would be done okay. He was not expecting the first thing to happen when a developer got involved being giving him property with an historical value that was not even part of the Maine Street Station parcel. He talked about other problem areas like the old Times Record building, the fire station, and the NAPA building. He wants to challenge the Council to make this a transparent process, but he does not believe there will be much public input on this project.

Correspondence: None.

Adjustments to Agenda: None.

Manager's Report:

(a) Brunswick Recycling Update

Manager Gerrish said, responding to Mr. Blanchard's comment about town accounting, the town is audited every year and it get highest marks; the funds are well taken care of.

Chair King said the discussion on where the funds go for bag revenues will happen this upcoming budget cycle.

John Eldridge, Finance Director, said, responding to Mr. Blanchard's comments, the numbers Mr. Blanchard used are from the town's budget documents, but the town changed how it accounts for funds in this area. Prior to 2003, the town did trash collection in-house, with the cost for things like worker's compensation and benefits not included in that line item. In September 2003 the town moved to a contract for trash pick-up with Pine Tree Waste. The budgets are not comparing apples to apples. There would have been a reduction in worker's compensation and benefit costs not reflected in the contract price. In 2004 the town established an enterprise fund for solid waste facilities. It is a separate company, with the town becoming a customer. This way the town captures the cost for those facilities and tries to recoup it with tipping fees. The town decided to charge everyone, including itself, a fee of \$80 per ton, with the funds to go into solid waste and collection. When the town went to an enterprise fund, it took costs related to the landfill from other budget areas. It was removed from the general fund part to the enterprise fund. This was an effort to capture the full cost of the landfill. The annual report shows that currently there are no landfill closure funds, and the liability is captured in the enterprise fund instead. The deficit in that fund was \$1.9 million on June 30, 2005. The reason is the town had not put aside enough funds in previous years.

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The Enterprise fund accounts for all the costs associated with the landfill. This liability number has been carried from year to year. As far as pay-per-bag, he does not know what the revenue from the bags will be each year, but the numbers he has seen are less than Mr. Blanchard's million dollar figure. As far as accounting, there was nothing inappropriate going on; it got moved from the notes to the face of the financial statement.

Manager Gerrish said he wrote a memo on the enterprise fund, and private collection was spoken of publicly and the Council voted it in. There was another \$100,000 added to the budget and that was discussed at that time.

Councilor Sartoris said there were other issues when this vote was taken, including the worker's compensation issue. The town was going to have to go to a two person garage collection truck, and this cost was not reflected in any numbers. Once the town increased its rate to \$80 per ton, other towns' landfills were cheaper so private haulers went elsewhere. The town is heavily audited in this community, and if someone has concerns about budgeting, they should go to the staff first prior to going public about issues.

John Foster, Public Works Director, provided numbers on the new recycling and trash collection numbers since the pay-per-bag system began. The curbside recycling has increased by 55% and the curbside trash collection has been reduced by 50%. These numbers are preliminary and they may change. He will continue to monitor the numbers.

(A copy of Mr. Foster's memo will be attached to the official minutes.)

Manager Gerrish thanked the Public Works Department for all the hard work to get the information out.

Councilor Sartoris asked about those who are out of town for the winter. Manager Gerrish responded those people will have the chance to get their free bags.

(b) Grant Request

Kevin Schofield, Police Commander, said this item is for a Cumberland County Underage Drinking Enforcement Task Force Mini-Grant. This grant will help pay overtime for alcohol abuse prevention. There are in-kind cost and some small cost for advertising the program.

(A memo will be attached to the official minutes.)

Councilor Sartoris moved, Councilor Watson seconded, to accept and expend for the Underage Drinking Enforcement Grant. The motion carried with nine (9) yeas.

Remainder of the Manager's Report was taken up after Public Hearings and Action Items.

(c) Financial Update

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Manager Gerrish updated the Council on financial matters. Excise tax is about flat and state revenue sharing is lower, but the town had budgeted for less. Investment income is \$30,000 ahead, and is expected to be between \$100,000 to \$200,000 ahead by the end of the fiscal year. On the expenditure side, he is concerned with overtime for firefighters. There has been a savings so far in the winter budget.

(d) Council Committee Updates

Councilor Ewing said the Recycling Committee is going to Auburn, Massachusetts, to look at the recycling center Brunswick is using. The recycling company is paying for the trip. He hopes to get a promotional video from it.

(e) Council Goals

Manager Gerrish asked the Councilors to review the goals so they can be finalized at the February 26 meeting.

(f) Workshops

Manager Gerrish said there are two workshops needed, one on impact fees and one on possible base acquisitions. He is proposing that in March all four Mondays be used for Council meetings or workshops. The LRA expects to receive the declaration on surplus property soon, and the town will have 90 days after that to respond.

Manager Gerrish added he signed a three year lease with Southern Maine Community College. This is really a positive thing for this community and the state.

(g) Council Vice Chair Election

This will be discussed at the February 26 meeting.

19. The Town Council will hear public comment on the following Special Amusement License application, and will take any appropriate action.

Special Amusement

Cuddy's Bar & Grill

D/B/A: Cuddy's Bar & Grill

103 Pleasant Street

Kristen Dwelley

Chair King said this item is for public comment and approval of a Special Amusement License for Cuddy's Bar & Grill. The license is for live bands on Friday, Saturday, and Sunday, Karaoke on Wednesday, and open mike on Thursday.

Chair King opened the public hearing; hearing no comments, she closed the public hearing.

Councilor Ewing moved, Councilor Favreau seconded, to approve the Special Amusement License for Cuddy's Bar & Grill. The motion carried with nine (9) yeas.

- 20. The Town Council will hear public comment on amendments to Article XVIII of the Town of Brunswick Personnel Policy relating to the process for application, qualification, examination, eligibility and appointment of new firefighters and police officers, and will take any appropriate action.**

Manager Gerrish said this item is for public comment on amendments to Article XVIII of the Town of Brunswick Personnel Policy relating to the process for application, qualification, examination, eligibility and appointment of new firefighters and police officers. The Council passed this as an emergency ordinance at the meeting of January 8, 2007. This will approve it on a permanent basis. It allows the manager to go to the Council and get permission to expedite the hiring process, if needed.

Chair King opened the public hearing; hearing no comments, she closed the public hearing.

Councilor Augur asked if this would add more red tape, and if, for a two-year period, the manager should be able to allow this to happen without first having to come back to the Council.

Manager Gerrish said after reviewing the federal laws for hiring, it was felt best to have it on an as-needed-basis, not ongoing. This would only come into effect at the time of hiring someone who has met many of the criteria.

Councilor Watson moved, Councilor Ewing seconded, to approve the amendment to Article XVIII of the Town of Brunswick personnel Policy relating to the process for application, qualification, examination, eligibility and appointment of new firefighters and police officers. The motion carried with nine (9) yeas.

(A copy of the adopted language will be attached to the official minutes.)

- 21. The Town Council will hear public comment on amendments to Local Redevelopment Authority Ordinance regarding allowing the Council to appoint two Councilors or their designee to the LRA, and will take any appropriate action.**

Manager Gerrish said the Council voted on an emergency basis to amend the LRA ordinance to allow the Council to appoint two Councilors or the Town Council's designee. The Council passed this as an emergency ordinance on January 8, 2007. This will approve it on a permanent basis.

Chair King opened the public hearing; hearing no comments, she closed the public hearing.

Councilor Ewing moved, Councilor Favreau seconded, to amend the LRA Ordinance to allow the Council to appoint two Councilors or their designee to the LRA. The motion carried with nine (9) yeas.

(A copy of the adopted language will be attached to the official minutes.)

ACTION ITEMS:

- 22. The Town Council will consider a moratorium on The Brunswick Community Health and Land Care Ordinance, and will take any appropriate action.**

Manager Gerrish said this item is to consider a moratorium on The Brunswick Community Health and Land Care Ordinance. On January 16, 2007, the Council discussed it and asked him to come back with a moratorium language until the courts made a judgment on the legality of the parts in question.

Cliff Goodall, attorney representing the Katahdin Center, said he has familiarity with the issue of moratoriums. His first concern is whether the Council has the authority to adopt it; he believes the Council does not have such authority under the Charter, which allows for a fifty day period for passage on an emergency basis. This moratorium is not supported by the Town Charter since there needs to be a specific finding for an emergency, which it does not have. State law allows moratoriums on items on development, which require permits. The ordinance the Council is putting the moratorium on does not require permits or licensing so it does not apply to this. There is very questionable legal authority for the Council to do this moratorium.

Mr. Goodall continued, saying the Katahdin Center can also do a Declaratory Judgement on this issue and on the moratorium. By July, when the moratorium will run out, the courts may not have made a decision or have made one that the town does not like. Therefore, the issue of the hiring of lifeguards may still be there since there are no guarantees they will have jobs after July. It creates more doubt. They are proposing that instead of doing the moratorium for the sake of Coffin Pond, his group feels the ordinance would only apply to land, not surface water, applications. They will be asking the courts to have it only apply to land. The concern for Coffin Pond would be gone simply by interpreting the language that it is on town owned land, not water. There is good legal reason to believe that the ordinance will be upheld in the courts.

Pat Scully, Town Attorney, responded to Mr. Goodall's comments. As far as the 180 days in the moratorium and the 50 days for an emergency ordinance, there is a big difference. The moratorium is drafted to last for 180 days and the emergency ordinance part of the charter is for an ordinance. The 50 days applies to the moratorium to the extent that the Council will need to come back and follow the regular process. The charter language is not very demanding as to what is considered to be an emergency. It gives flexibility to the Council and the courts do not usually second guess the local authority. As far as Title 30-A, the 180 days for land use does not apply to this; it is not referenced, instead it just happens to be the same number of days. The reason for the

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moratorium is to allow the courts to decide on the Declaratory Judgment. That judgment is focused on the section that could be against state law. Around the issue of interpretation, when it comes to Coffin Pond, they have concluded that there is real danger to Coffin Pond. As a general overview, the Council has broad legislative authority for the town and they have the authority to enact the moratorium.

David Whiteside, 64 Spring Street, asked about the vote on it and the cost for legal action.

Laura Moon, 4 Wadsworth Road, said just because the town can do the moratorium, it does not mean the town should do it. The will of the people should be honored, even if the vote was close, it still passed. As far as Chapter 12.5 of the Code of Ordinance on the sludge and residual free zone ordinance, it is more restrictive than the Land Care Ordinance since it is a band on sludge use in certain zones. She asked the town to refrain from spreading the product until the court takes action.

Councilor Sartoris said this is a good faith effort and the public did not have the information that questioned the legality of this issue and the peer group study information was not known. Yes, there is an ordinance for the coastal protection zone and she will bring it back since it does not have legal standing.

Councilor Augur asked what the Katahdin Center would bring for a Declaratory Judgment. He also asked to what extent the Council can change the ordinance under the Charter.

Mr. Goodall responded that they will be asking in the Declaratory Judgment that it does not apply to water, but only to land.

Mr. Scully said the Council can amend the ordinance, like they have the authority to amend any other ordinance.

Manager Gerrish added this is no different than any other ordinance; the Council can repeal, amend, or change it.

Councilor Augur said the Declaratory Judgment is to see if the state law is against the ordinance. The declaration is not the town singling out a resident to sue (as implied by a speaker); the Council is stuck with an ordinance which may contradict state law, and they are asking the court to clear this up.

Councilor Sartoris said the town has several options. The basis for the emergency moratorium is to open Coffin Pond. The request for a Declaratory Judgment is not for Coffin Pond, but for biosolids spreading. Mr. Fusco and Ms. Moon have been supportive for the Coffin Pond change, but not of the state law conflict. This will address the whole issue so they do not have to do it twice.

Councilor Daughtry asked if the moratorium runs out in July how that will affect the hiring of lifeguards.

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Manager Gerrish said the hope is to hire lifeguards and hope to get an answer from the court prior to 180 days and make ordinance changes, if necessary. As far as the issue of use of chlorine in Coffin Pond, the town is following through with the state to see if it is okay.

Chair King said the Council is not going against the will of the people, but are trying to make sure the ordinance is consistent with state law. The moratorium was a way to handle it all at once.

Councilor Daughtry said she agrees with the spirit of the Land Care ordinance; if anything, it did not go far enough. It is the ability to enforce it that brings her to vote for the moratorium. The town is not suing the citizens on this, but is asking for a judge's opinion if the town can legally enforce the provisions of the Land Care Ordinance.

Councilor Ewing moved, Councilor Schneider seconded, to place a moratorium on the Brunswick Community Health and Land Care Ordinance. The motion was carried with nine (9) yeas.

(A copy of the adopted language will be attached to the official minutes.)

23. The Town Council will discuss a charge for the proposed Brunswick-Topsham Health Loop Trail Committee, and will take any appropriate action.

Manager Gerrish said this is about forming the Brunswick-Topsham Health Loop Trail Committee.

Cathy Lamb, President of the Rotary, encouraged all Councilors to endorse this project and to agree that this is a committee worth having.

Councilor Ewing said in the charge's last section it states the first meeting will be by February 28, 2007, and it would take an additional three weeks to be able to get this committee's members.

Councilor Favreau asked if Ms. Randolph has any people in mind.

Ms. Lamb said Ms. Randolph may have some names in mind.

Manager Gerrish said they are asking for agreement for the concept and the group will get the membership.

Councilor Sartoris is supportive of this idea.

There was no vote, but there is a feeling of support for this committee moving forward.

24. **The Town Council will discuss approval of an Amendment to the Collective Bargaining Agreement between the Town of Brunswick and Brunswick Police Benefit Association, and will take any appropriate action.**

Manager Gerrish said the town has an agreement with the police union for another year. As part of the town's ongoing effort to attract people, it looks to see if places can be changed. Under the education incentive section, they want to be able to offer this if someone comes from another department or location with a least one-year of experience.

Councilor Ewing moved, Councilor Webb seconded, to approve the Amendment to Collective Bargaining Agreement between the Town of Brunswick and Brunswick Police Benefit Association. The motion carried with nine (9) yeas.

(A copy of the agreement language will be attached to the official minutes.)

25. **The Town Council will discuss a poverty tax abatement, and will take any appropriate action.**

Councilor Sartoris moved, Councilor Schneider seconded, abate for the tax year 2004/ 2005 the taxes, liens and interest to date. The motion carried with nine (9) yeas.

26. **The Town Council will consider appointments to the Town's Boards and Committees, and will take any appropriate action.**

Councilor Augur nominated Dorothy Ollier to serve on the Assessment Review Board for a term to expire on January 12, 2009, and Thomas Green to serve on the Sewer District Trustees for a term to expire on April 1, 2010. Seeing no other nominations, the Council voted nine (9) yeas to appoint Ms. Ollier and Mr. Green.

CONSENT AGENDA:

- (a) **Dog Warrant**

Councilor Sartoris moved, Councilor Ewing seconded, to approve the consent agenda. The motion carried with nine (9) yeas.

(A copy of the dog warrant will be attached to the official minutes.)

Councilor Webb thanked the police for the job they did with the incident on Perryman Drive.

Councilor Ewing moved, Councilor Favreau seconded, to adjourn the meeting. The motion carried with nine (9) yeas.

The meeting adjourned at 9:00 pm.

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PLEASE NOTE: THESE MINUTES ARE NOT VERBATIM. A VIDEO RECORDING OF THE MEETING IS AVAILABLE AT THE TOWN CLERK'S OFFICE DURING REGULAR BUSINESS HOURS.

Frances M. Smith
Town Clerk
February 15 , 2007

February 26, 2007

Date of Approval

Council Chair