

APPROVED
BRUNSWICK TOWN COUNCIL MINUTES
February 21, 2006
6:45 p.m.
Municipal Meeting Facility

6:45 P.M. Chair King called the meeting to order.

Councilors Present: Chair Joanne T. King, W. David Watson, Jacqueline A. Sartoris, Hallie Daughtry, Jeffrey A. Schneider, Louise V. Ansari, Ryan E. Ewing, and Newell A. Augur.

Councilors Absent: Councilor Forrest Lowe.

Town Staff Present: Patricia Harrington, Assistant Town Manager; Fran Smith, Town Clerk; John Foster, Public Works Director; Tom Farrell, Parks and Recreation Director; Theo Holtwijk, Director of Planning and Development; Steve Walker, Natural Resources Planner; Peter Baecher, Facilities Manager for Parks and Recreation Department; and TV video crew.

EXECUTIVE SESSION: 6:45 P.M. Union Negotiations per 1 M.R.S.A. Sec. 405(6)(D)

Councilor Sartoris moved, Councilor Watson seconded, to go into executive session to discuss union negotiations pursuant to 1 M.R.S.A. §405(6)(D). The motion carried with seven (7) yeas. Councilor Ewing arrived after the vote.

MEETING CONTINUED: 7:00 P.M.

Chair King called for the Pledge of Allegiance.

Public Comment: None.

Correspondence: None.

Manager's Report: None.

Adjustments to Agenda: None.

25. The Town Council will hear public comments on a proposed ordinance amendment to remove the public hearing requirement for food establishment and innkeeper's licenses, and take any appropriate action.

Fran Smith, Town Clerk, said this proposed ordinance amendment removes the requirement for food establishment and innkeeper's licenses to have a public hearing. It would require that the licenses be issued by the Town Clerk after a favorable inspection by the Brunswick Health Officer and any arrearage for taxes, fees or any other obligations to the town are met.

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

Councilor Daughtry moved, Councilor Watson seconded, to approve the ordinance amendment to Chapter 10, Article II, Sec. 10-26(a)(8), removing the public hearing requirement for food establishment and innkeeper's licenses. The motion carried with eight (8) yeas.

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

26. The Town Council will hear public comments relative to a petition for the enactment of an ordinance entitled "Brunswick Community Health and Land Care Ordinance," and take any appropriate action.

Assistant Town Manager Patricia Harrington said there are three options available to the Council: to pass the ordinance; to send the ordinance to voters at a date specific, either the June or November Election or a Special Election; or, to table this for a thirty day period during which time a decision will have to be made.

Peter Baecher gave a short history of the Parks and Recreation Department property management practices and developments of the last few years to date. He said the issue began with a complaint received five and a half years ago regarding application of a pesticide in violation of the Aquifer Protection Zone ordinance. The end result of that was that the Department stopped applying any fertilizers and pesticides at Edwards Field. Mr. Baecher noted that Bowdoin College's Whittier Field was also affected by this. Field conditions deteriorated, compromising their ability to maintain them at safe and playable levels. In 2004 a draft ordinance was proposed to permit the resumption of maintenance practices, with restrictions. Since then changes were made and an APZ ordinance amendment was enacted. This solution did not satisfy some people regarding the compost issue and this ordinance proposal is a result of that dissatisfaction.

Mr. Baecher said the Parks and Recreation Department was asked by the Council Chair and Vice-Chair to share with the Council the Department's position with regard to the proposed ordinance. He said the proposed ordinance combines two un-related subjects: pesticides and Class A compost. He then spoke at length about the pesticide portion of the proposed ordinance. He said it was pretty much taken from a Marblehead, Massachusetts ordinance prohibiting the use of pesticides, with rare exceptions, by the various departments of the town. He also spoke of a community approach used by Toronto, Canada, where all pesticide use is banned, by the City, by homeowners and by businesses; it is difficult to call this a community ordinance when no residents are included in it and only the town is regulated. The Parks and Recreation Department is 98% of the way there and would join with the community if this was a community desire. An ordinance change should address the problem, not unfairly single out those who are being responsible. Mr. Baecher also pointed out that water treatment plants are exempt under this proposed ordinance because they use a pesticide to treat drinking water. However, the town also uses the same pesticide to treat Coffin Pond. Since the proposed ordinance makes no exemption for pools or ponds like Coffin Pond, passage of the ordinance would close Coffin Pond for using the same ingredient as is used by the Water District in drinking water.

Mr. Baecher then went on to address the proposal to prohibit the use of sludge-based products; the Department currently utilizes Class A compost, which is in that category. He brought up

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several facts and said the supporters of the proposed ordinance have ignored that scientific evidence. He went on to say the Department has found Class A compost to be a valuable and inexpensive tool for use in turf and landscape care, and the Council should not compel them to purchase a much more expensive product when they already have a safe and highly recommended one.

To sum up the Parks and Recreation Department position on the issue, Mr. Baecher said pesticides and compost should be treated as independent issues. If there is to be a restriction on pesticides, it should be done together, as a community; and, the use of Class A compost is a beneficial practice that should not be prohibited. He also addressed the financial implications of the proposed ordinance.

Responding to Councilor Augur's request to know if he was aware of any scientific or peer review studies which raised doubts about the safe and responsible application of Class A compost, Mr. Baecher said what he has seen has not addressed the Class A product specifically, as the fundamental point of the article.

Councilor Augur then asked about the process as to how and why the determination was made that the athletic fields needed that kind of product, and asked if any of the organizations using the field commented specifically on their quality.

Mr. Baecher responded that the use of compost has not been standard practice for a great deal of time; the Department started using it four to five years ago and has seen a great benefit from it. Soil tests and then visual assessment are the way to start. Soils on these fields are sand based and compost is an excellent organic matter to improve the soil structure and help the nutrient and water holding capacity. Mr. Baecher said he initiated the use of the product motivated by improving the quality of the field, and he has received comments that the fields look great.

Pat Scully, Town Attorney, said there are four areas of concern regarding this proposed ordinance. They are: the enforceability of sections preempted by State law; enforceability according to the policies governing enforcement of municipal ordinances when Brunswick has no general enforcement provision, rather each ordinance has its own enforcement terms; proposed changes necessitating approval by majority vote of registered voters being inconsistent with Charter wording, which, in his opinion, gives the Council the authority to make changes after enactment; and inconsistency with the Charter on the effective date of the proposed ordinance.

Chair King asked what the consequences are to the town should the Council choose to enact the proposed ordinance as is.

Mr. Scully responded that whichever way the ordinance is adopted there would be exactly the same legal problem, an ordinance subject to challenge. If challenged, he feels the court would find it to be unlawful as pre-empted by State law.

Councilor Augur asked if there was any provision in that section of State law that would make the sludge provision salvageable in any way, such as by the town taking certain actions or doing certain tests.

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Mr. Scully responded that the town can regulate up to State standard but no stricter, there is not a way around that.

Councilor Daughtry asked for clarification that if the town adopted something similar to Marblehead or Toronto it would not be legal.

Mr. Scully said he was only addressing the sludge spreading aspects of this proposal. It is the Maine Solid Waste Disposal provisions the have the pre-emption clause. State statutes on sludge specifically say the Town cannot be stricter.

Councilor Ewing asked for and received from Mr. Scully, clarification that the town is able to enact ordinances in certain subject areas because the State either has covered the whole field of regulation or the State says the municipality does not have the authority, such as in this case.

Chair King opened the public hearing.

Tom Fusco, 66 Board Road, said they are here with the ordinance and faced with the possibility that it is illegal on sludge simply because the Council chose to go forward with the use of sludge. He said it was his understanding that it was illegal in the U.S. to ban the use of legal pesticides by private citizens, such as was done in Toronto, Canada. Mr. Fusco then read a prepared statement saying, in part, that this is a needed policy and residents have voiced their support for such a policy, they do not want sludge use.

Nat Beecher, representing New England BioSolids and Residuals Association, a non-profit organization, spoke about the use of Class A compost. This has been extensively researched since the 1970's, a sewage sludge based material has been used since the 1920's. There have been two major National Academy of Science reviews of U.S. EPA policy on sewage sludge use, including Class A and Class B. The first review concluded that negligible risks are present when used according to the guidelines. In 2002, the finding was that there was no documented evidence that the regulations have failed to protect public health. There are very well documented benefits to using compost products and it is a very well tested material. He also spoke specifically to the use of the product in Brunswick.

David Brooks, 2 Meredith Drive, an environmental engineer, father, and coach, had concerns at first with use of pesticides, but not after research and being educated on how little it is used in Brunswick. He got comfortable with understanding turf management and the professionals the Town employs. The change to Class A material was considered better than commercial type fertilizers. He said the issue is perception; he would rather spread Class A compost than chicken manure. He did not support the ordinance passage.

Ted Crooker, 44 Storer Road, said that compost is not sludge, it is fifty percent wood. High schools are required to use it since it costs less and performs well. It is safe. The Council should not table this and should not pass it; the ordinance should be put out to vote.

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Pat Coughlin, 6 Thompson Street, environmental scientist, supports the use of Class A compost on town-owned property. It is the right thing to do to close the recycling loop and provide a safe use for sewage waste. He said the Council should continue to listen to staff recommendations.

Will Bennett, 51 Arrowhead Drive, coach and president of youth soccer league, said Edward's Field has deteriorated since stopping the application of fertilizers and chemicals. He said to trust the staff and the professionals who were hired.

Jeff Pinette, Maine Waste Water Control Association, said Class A is safe and has positive benefits. He also pointed out the other aspect of the proposed ordinance, establishing the National Organic Program as the regulatory authority for approving acceptable fertilization and control products on Town controlled lands, should be reviewed, as well. There is no scientific basis for the standards of what is considered organic. He told the Council to focus on keeping the goals simple, saying the Town's practices have been exemplary and there is no need for an ordinance.

George MacDonald, Director of Community Assistance Programs for the Maine State Planning Office, shared the State's policy on solid waste and its management. It will use the best effort to take care of waste it creates, through a hierarchy of practices, including reduce, reuse, recycle, compost, incinerate, and landfill. State policy encourages the use of composted biosolids to the Class A standard. The proposed ordinance conflicts with this. The State puts no restriction on the use of Class A compost. He said to consider strongly that the Peer Review Committee supported its use.

Chair King closed the public hearing.

Responding to Councilor Ansari's question about Canadian law vs. U.S. law, Mr. Scully said he is not aware of any restriction on government regulating the application of pesticides by individuals in a community. He did not research this for tonight.

Chair King said this was discussed at length last year and the vote was seven to two to allow the Class A product to be used.

Councilor Daughtry asked for and received clarification from Mr. Scully that he is not aware of any law that would restrict community's ability to regulate individual application of pesticides; however, he reiterated that he had not researched the topic specifically.

Councilor Ansari said the difference between this and what was voted on last year is that last year was just concerned with the Aquifer Protection Zone, this is different since it is about pesticides and composting on all town-owned or leased land.

Councilor Sartoris said this appears to be an illegal ordinance. If residents want Coffin Pond closed and their tax dollars spent defending an illegal ordinance, she would like to hear it from them. She would like them provided with information regarding the consequences of the ordinance.

Councilor Sartoris moved, Councilor Watson seconded, to place the following question on the June 13, 2006 municipal election: “Shall the ordinance entitled ‘Brunswick Community Health and Land Care Ordinance’ be enacted?”

Councilor Watson said to table this and continue debate is fruitless. To vote this in is a violation of law. He would not vote for it. The only choice is to send this to referendum.

Councilor Sartoris said the people of Brunswick have common sense and will not vote for this ordinance. She would like to get this over with in June, giving staff the opportunity to use the product in the Fall.

Tom Farrell, Director of Parks and Recreation, said, in response to Councilor Watson’s question about Coffin Pond, the facility is used for ten to eleven weeks with 8,000 to 12,000 people visiting during that time every year. If closed, there would be a lot of people upset about it. It is a healthy swimming environment catering to young families; they do not track other demographics such as family income of the users.

Councilor Ansari said she appreciates what the petitioners where trying to do, have a safer community, but, as it is written, she could not support it. She hopes they look into it further and come back with something that would hold up legally. She would like to see this go to vote in November.

Councilor Watson reconsidered and said that the June date would be more appropriate.

Councilor Daughtry supports the ideals of this initiative but due to the legal problems, she cannot vote for the ordinance as it is. She hopes it is revisited and would like to see something enacted to prevent the use of homeowner pesticides. She would prefer a broader representation but a June referendum would be fine to get it over with.

Councilor Schneider said he is in favor of putting the proposed ordinance out to referendum in June.

Councilor Ewing said he favors the June date for referendum. If the petitioners are really interested in pursuing organic practices in Maine, it should be taken up at the State level.

Councilor Augur supports the June 13, 2006, referendum date.

Councilor Sartoris explained why this is being proposed to go out to referendum, saying that there has been no interest by the petitioners to compromise and work with the Council, as with the other ordinance being proposed.

Chair King said she feels people who bring these ordinances forward should have to prove their case and the ordinances should go to referendum. She supports the June 13th date.

Councilor Augur said, based on the intent of the petitioners, there is no amendment that could save the document from being effectively contrary to superseding State law. The State has pre-empted it by its own regulation and by law, it is a closed case.

VOTE ON THE MOTION:

Councilor Sartoris moved, Councilor Watson seconded, to place the following question on the June 13, 2006 municipal election: “Shall the ordinance entitled ‘Brunswick Community Health and Land Care Ordinance’ be enacted?” The motion carried with eight (8) yeas.

(A copy of the public hearing notice, proposed ordinance, the Peer Review Report, a list of properties that would be impacted by the ordinance, prepared comments by Tom Fusco, NEBRA, and two letters from the Town Attorney will be attached to the official minutes.)

27. The Town Council will consider setting a public hearing on a proposed amendment to the Brunswick Rural Smart Growth Ordinance, and take any appropriate action.

Ms. Harrington said these amendments are a result of the Council workshop on February 9, 2006. She reminded the Council that there is a vote set for March 6, 2006, on the underlying ordinance. This item is specifically about setting a public hearing on the amendments.

Mr. Walker gave some background on the amendments. Since the workshop, the language has been further refined and modified. He then outlined the five major topics that were affected.

Councilor Ewing said he was hoping there would have been be placeholder language for a transfer of development rights (TDR) program for consideration at the public hearing on March 6, 2006. The program is based on the 2004 draft ordinance language in regard to the transfer of development rights. It does not require development rights but puts it in place in case the Planning Board, in the future, wants to institute a TDR program. This would be another way to mitigate the wildlife zone. Unless there are glaring problems, he would like it included for public hearing on March 6, 2006.

Chair King pointed out that there would have to be a motion and support of the Council to include it.

Mr. Walker said transfer of development rights were part of the September 2004 version of this ordinance that was originally going before the Planning Board. It came from the early 2004 full Rural Brunswick Smart Growth Committee report. The committee felt the Planning Board should look into it. However, reading from that report, Mr. Walker said “Careful consideration is needed to determine whether any other parcel can receive the density of a parcel to be protected and what the maximum allowable density should be for that receiving parcel. This process needs to be carefully crafted so as not to result in undue development in any single area.” This is typically a complex program and where lots end up is tricky. It is a complex issue, a valuable tool to look into further. The original committee looked at drafting the ordinance language as a short term goal, and TDR as a more intermediate goal. We should not lose site of it but maybe start with what we have and look at it in the future.

Mr. Holtwijk said he supports the concept, but has trouble adding placeholders and not addressing the rest of the package. He would be happy to revisit it as a complete package.

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Councilor Augur asked if Councilor Ewing would support directing the Planning Board to immediately begin looking at a TDR mechanism for landowners who are interested in transferring their acreage as a form of mitigation under the ordinance.

Councilor Ewing said that would be good, but it may be a good thing to have it as a placeholder in the ordinance to give another option. If it is not, he is not sure the goal of the Comprehensive Plan to have only one-third of future housing outside the growth zone can be reached. He would like to have the Planning Board look at it.

Chair King said it is complex and merits being something on its own after the ordinance is passed, to give it due diligence.

Councilor Ewing said as long as the Council directs the Planning Board to look at TDR, then he is fine with that.

Responding to Councilor Daughtry's question asking about TDR's in the corridor area, Mr. Walker said it is not a major change and it is reasonable.

Councilor Sartoris said she feels it should go to the Planning Board and the language needs to be worked on, for example, the fifty percent bonus density is not specific with regard to whether or not it is in the rural zone or the growth zone.

Councilor Ewing said the fifty percent is old language, there have been changes with the base closing and other factors since. He would be happy with the Planning Board looking at this.

Chair King asked for public comments.

Lisa Martin, 185 Hacker Road, representing the five initial petitioners, gave an opinion on the amendments. Since it has been an open process and drafted with cumulative input from the public and town Councilors, and it does not alter the overall intent of the ordinance, they are acceptable in concept. They provide more flexibility for the affected landowners but allow substantial protection to critical wildlife habitat in the forested overlay district. Because the Town Council has kept the ordinance drafting open to the public, it is not a subversion of the ordinance for which signatures were sought. She also encouraged the Council to pursue the TDR and have more discussion about Lands for Brunswick's Future.

Councilor Augur said the discussion tonight is whether or not to place these items out to public hearing. On the date set for the public hearing, there would be a chance to comment specifically on the amendments.

Chair King said the public can speak to that tonight so that they can let the Council know if they want the amendments to go to public hearing.

Todd Buchheit, 105 Collinsbrook Road, read a statement he authored, saying he was speaking on behalf of most of the people who are opposed to the ordinance and the amendments. He said the third option, of pre-approving language to be enacted contingent upon the approval of the petitioned ordinance, does not exist. He cited the Town Charter and said to present this in any

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other content materially changes the intent. It is altering before due process and is acting outside the scope of the Council's authority. To approve it now, after having voted it down in the fall, would not be ethical or wise, there is only one option and that is to put it out to referendum.

Bruce Clark, 197 Highland Road, said the Council should not be talking about an amendment to something that does not exist.

Ted Crooker, 44 Storer Road, said he is opposed to this ordinance; it should be put to referendum the same time as the other issue.

Pat Scully said the Council does have the authority to amend an ordinance it adopts either as an initiative process, or the voters adopt through that process. The Council clearly has the authority to develop and consider amendments that it would adopt in the event the ordinance that is proposed by initiative is adopted either by the Council or by the voters. Under the Charter, the Council can adopt the ordinance or send out to vote – in either event the Council is the legislative body and has the authority to adopt amendments whether the Council or the voters have adopted it by initiative.

Chair King said the process question is what troubles people; something should be passed before talking about amendments.

Mr. Scully said the Council can consider amendments and adopt them when an ordinance is in place. There is no Charter prohibition on developing amendments to an ordinance adopted by Council as the result of the initiative process or by the voters if it is put out to them.

Councilor Ewing said the first ten amendments of the U.S. Constitution is an amazing precedent for amending an imperfect document. It is too high a standard to craft the perfect document. Action is being delayed, we need to push forward.

Chair King read a statement from Councilor Lowe, who was absent from the meeting.

Councilor Augur thanked the chair publicly for her allowing him to try to move forward on drafting amendments even though she is not supporting it. The amendments reduce ambiguity, allow leeway, and are a measurable improvement so that landowners can understand what the law is requiring.

Councilor Augur moved, Councilor Sartoris seconded, to set a public hearing on the proposed Smart Growth Ordinance amendments on March 6, 2006, including modifying the language on page eight to include "or wildlife corridors" under the mitigation section, and under applicability, for fences, adding the word "or" after a,b,and c under section 6 on page 2.

Councilor Sartoris said this is a process vote, not an agreement to approve the amendments or the ordinance petition language. This is unorthodox but the town attorney said it is allowed. A lot of effort was put into this part of the process. The Council has been extremely responsive to the concerns raised about the language and authority issues. It is a greatly improved document with

substantially the same intent and a number of compromises reached. There will always be people against land use regulation.

Councilor Watson said there were those who felt this work could not be done, but it was and shows a lot about the Town of Brunswick and the people who work for it and the Councilors who participated in the process. This is part of the process, it does not mean he supports rural smart growth. If it does pass, the amendments do need to be in place since they will offer some protection to the affected people. The original petition is severely flawed.

Mr. Walker suggested, as a clarification on the amendment about wildlife corridors, it would be cleaner language to replicate the language in section one for the block, in section two for the corridors.

Councilor Ansari said she did not vote for the ordinance last fall because it was flawed, and she appreciates the work that has been done, but more work needs to be done than time has allowed. She is not going to support amendments before voting on an ordinance. She appreciated the comments of the petitioners but they do not represent all the petition signers. If the ordinance is voted in, that is the time to work on it, and time should be taken to make all those changes that need to be done.

Chair King said she agrees with Councilor Ansari and that five petitioners do not represent all one thousand eight hundred signers. The process is flawed, it should be passed as is or go to referendum. She will not support the public hearing for the amendments.

VOTE ON THE MOTION:

Councilor Augur moved, Councilor Sartoris seconded, to set a public hearing on the proposed Smart Growth Ordinance amendments on March 6, 2006, including replicating language on page eight in section one of the mitigation section for block, in section two for corridors, and under applicability, for fences, adding the word “or” after a,b,and c under section 6 on page 2. The motion carried with five (5) yeas. Opposed: Schneider, King, Ansari.

(A copy of Steve Walker’s memo, and a revised version of the ordinance incorporating the proposed amendments, and Councilor Lowe’s statement, will be attached to the official minutes.)

28. The Town Council will receive a presentation regarding railroad crossing improvements on Maine Street, and take any appropriate action.

Ms. Harrington introduced Michael Grizkewitsch and Don McKay from the Federal Railroad Administration, and Nate Moulton from MDOT, who, along with Public Works Director John Foster, were present to get input and answer questions from the Council. Ms. Harrington said this item deals with the upgrade of the railroad crossing on Maine Street and Park Row near the Maine Street Station property. Option 1 shows an overhead lighting system; Option 2 shows an on ground lighting system with traffic islands put in Maine Street. The Town and MDOT have discussed two options for the improvements. Ms. Harrington said the recommendation is that the Council approve Option 2 that places islands on Maine Street for the train lights. This option

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restricts some turning movements. There will be no left hand turn from Maine Street onto Fitch Place, and there will also be no left hand turn from Fitch Place onto Maine Street. This will cause some inconvenience for the public but we believe it will improve the traffic intersection of Fitch Place and Maine Street. The Brunswick Downtown Association supports this option.

Nathan Moulton, Manager of Rail Transportation, Office of Freight, said the first issue is the crossing and a second issue is a quiet zone. This project is not built around a quiet zone, it is a safety issue. Both of the options will help get a quiet zone but neither guarantee approval. Option 2 does have islands, which are supplemental safety measures recommended for a quiet zone; however, they will not meet the minimum criteria of one hundred foot islands. There are a number of other criteria, as well. Quiet zone decisions are not made by this group of people, they are made in Washington. Mr. Moulton is comfortable with either option presented for the crossing; they both meet federal requirements. He would encourage a vote tonight as any delay could jeopardize the project. MDOT and the FRA could go ahead without Council input, or the money could be diverted to other projects. The state is funding this project one hundred percent and has agreed to spend an additional \$50,000 on coating in other than the standard railroad silver color. A delay of even a week would cause them to lose this construction season altogether. The plan is to finish the design, go out to bid, and begin the work by May or June.

Chair King said she is uncomfortable that there is no opportunity for citizen input due to the short time frame in which to make a recommendation.

Mr. Moulton said neither choice will give a guarantee on a quiet zone. One is not better than the other. A two week delay jeopardizes the project and the funding. This project has been considered for two to three years. These improvements are primarily for the traveling public.

Councilor Ewing said, in the absence of knowing what option will secure a quiet zone, the Brunswick Downtown Association supports Option 2.

Councilor Augur said it would have been nice to have public input. However, lacking the time to do that, it is the Council's task to intuit that and make a determination. He asked what the exemption process is like with respect to a quiet zone application that has an island shorter than one hundred feet.

Mr. Moulton said the process does not change. The Town must complete an application to the FRA and there could be a site visit by a review team, which would make recommendations. Either one of these options would garner the support of the railroad and the State; neither will meet every requirement.

Mike Grizkewitsch, Federal Railroad Administration, said his primary job is dealing with quiet zone issues in seven States. He said this is a great chance for Brunswick with one hundred percent funding by the State, especially since it is not even on a State road. There have been approvals with islands less than one hundred feet, but that is based on a totality of everything. He cannot say that either option would gain approval without additional improvements by the Town, but no matter what is done, it will be an improvement.

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Councilor Ansari said she appreciates what the Town does to make it look its best, but safety must come first. She does not want to risk losing the funds and having the project done for us. The islands in Option 2 are a quarter the size they should be and there will also be traffic changes. She would like whatever option gives the town a better chance to get a quiet zone, but safety above aesthetics is important.

Mr. Grizkewitsch said the state will be improving two of the three crossings in the downtown area. This would be a new quiet zone, which must be a half mile in length. To do it correctly would be to include the crossing behind Hannaford, which would be funded almost totally by the Town. He stressed taking the quiet zone out of the issue this evening and making a decision on what is the best option for the Town of Brunswick.

Responding to Councilor Sartoris' question about how the raised traffic islands and the pedestrian crossings interact, Mr. Foster said there are no pedestrian marked crossings where the raised islands would be. There are no plans to cross walkers at the islands. He does, however, recommend that with Option 2 the island north of the tracks be extended a little bit to prohibit left turns onto Fitch Place.

Mr. Grizkewitsch said islands are not handicapped accessible and pedestrians are discouraged from crossing in the vicinity of the trains.

In response to Councilor Sartoris' question regarding the traffic flow for folks using the Mall, Mr. Foster said the northbound lanes remain the same and the southbound lanes will be shifted so there will be no impact on the Mall side.

Councilor Watson asked about extending the south side island to prevent left turns out of Maine Street Station.

Mr. Foster said that could be done and would be worked out in the construction sequence of the project.

Chair King said that early on there was a misconception that Option 1 was preferable to Option 2. The understanding now is that either option is okay but neither one guarantees a quiet zone. There are two separate issues and if the Council does not act tonight the Town may lose the project. She does not want to take the chance that the project will fall through the cracks.

Councilor Watson asked about the State's time schedule and if the Council had the luxury of waiting another week to call a special Council meeting and hear from the public.

Mr. Moulton reiterated his earlier comment that time is of the essence and he didn't feel there was time to wait another week. As it is, this is a very tight schedule.

Mr. Foster said he met with the State on January 19, 2006, and they needed answers as soon as possible at that time. Due to other pressing issues before the Council, this was the earliest it could be addressed.

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Councilor Augur asked for clarifications. First, on option 2, with the islands, it would be better for the application if they were one hundred feet long in both directions.

Mr. Grizkewitsch responded in that case there would not be a need to apply to Washington for a modification.

Second, Councilor Augur asked for confirmation that a modification would still have to be applied for if Option 1 was chosen.

Mr. Grizkewitsch responded that there would be no need for a modification since there would be no islands to modify. However, without putting a totality of everything into the quiet zone calculator, he could not even say if the island is necessary. He has not seen one that has not needed an island, and, knowing the traffic on the road, an island is probably needed.

Councilor Sartoris moved, Councilor Ewing seconded, to approve option 2 railroad crossing improvements at Maine Street and Park Row.

Steve Normand, Park Row, owner of Brunswick Bed and Breakfast on Park Row, said aesthetically Option 1 destroys the view of First Parish Church. Option 2, with islands, makes it so he will not be able to get home. After consideration, he has decided he can give directions to his guests to go around the church. The island eliminates a problem with Fitch Place left turns. He supports Option 2.

Councilor Ansari asked if there were concerns from the Police, Fire, or Public Works about safety issues and snow removal with the islands and the traffic change.

Mr. Foster said they were asked specifically by the Town Manager if they had a problem with Option 2. They did not, with the exception that the Police Chief originally had a concern about turns, but that was addressed by the decision to lengthen the islands a bit.

VOTE ON THE MOTION:

Councilor Sartoris moved, Councilor Ewing seconded, to approve option 2 railroad crossing improvements at Maine Street and Park Row. The motion carried with eight (8) yeas.

(A copy of the drawings of both railroad crossing options will be attached to the official minutes.)

29. The Town Council will consider the following request for Sellers of Prepared Food on Public Ways License for Gerald L, Bernier (d/b/a Day's News), and take any appropriate action.

Ms. Harrington said the request is for two separate issues. One is requesting that the Council waive its \$500 fee for a license of sellers of prepared food on a public way pursuant to Chapter 10, Article II, Section 10-26(6); the other is to approve the location of the hot dog cart in front of Days News, which would be approximately ten feet out from the store, in a sidewalk bump out.

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The Police Department, Planning Department, and the Public Works Department have all reviewed the location. Since it is difficult to determine from the drawing whether or not there would be pedestrian congestion issues, the recommendation is that approval be contingent upon the applicant working with the Police Chief and the Public Works Director to cite the location.

Chair King addressed the ordinance amendment that was enacted last year. She said that during that debate there was discussion that if the fee was waived there would be concern about people not being in the proper areas. The intention had been for people to stay close to their buildings as an allowance was being made to allow store owners to put tables outside where they had no other room to do so. This application is somewhat different.

Town Clerk Fran Smith said that last year the plan that this application presented was approved, that plan being a cart up against the building under the awning. The Council placed that stipulation of their approval.

Councilor Sartoris moved, Councilor Schneider seconded, to approve the placement of a cart contingent upon the approval of the appropriate Town staff.

At Chair King's request, Ms. Smith explained the allowance for carts in the Town of Freeport, which allows four carts on the sidewalk at a \$750 fee each.

Councilor Ansari said she is concerned about the cart being so far out in front of their business and if there are additional carts it will make Maine Street crowded.

Councilor Sartoris said she shares Councilor Ansari's concerns, but folks have expressed an interest in there being more commerce on the street and the ordinance may have been somewhat business unfriendly in the past. This is, however, different than what originally brought this ordinance up for amendment last year, which was tables and chairs outside a restaurant. She said to see how it goes and revisit the ordinance later, if necessary.

Councilor Ansari was concerned about waiving the fee when the Mall food vendors are paying \$1500 a year just up the street.

Responding to Chair King's concern about the cart being out away from the building, Ms. Harrington said the applicant told her the umbrella will not fit under the awning.

In response to Councilor Watson's concern about pedestrian traffic, Ms. Harrington said staff felt there was adequate space on the bump out and were supportive of the general location but wanted to be involved in the specific citing of the cart.

Councilor Augur said that since Day's does sell similar products inside their business, it fits within the intent of the ordinance.

VOTE ON THE MOTION:

Councilor Sartoris moved, Councilor Schneider seconded, to approve the location of the hot dog cart requested by Day's news, contingent upon the approval of the relevant staff. The motion carried with seven (7) yeas. Opposed: Ansari.

Councilor Watson pointed out that the reason the fee was waived last year was because the businesses pay taxes.

Councilor Ewing said Day's sells hot dogs inside and it is a matter of fairness to the vendors on the Mall that the fee for this application not be waived.

Councilor Ewing moved, Councilor Ansari seconded, not to grant a fee waiver. The motion failed with three (3) yeas. Opposed: Watson, Sartoris, Daughtry, Schneider, Augur.

Councilor Augur moved, Councilor Sartoris seconded, to waive the fee.

Councilor Augur said the applicant pays property tax, probably more than the Mall vendors' fees, and it is likely this will generate more commercial activity rather than compete for it.

Councilor Sartoris said she is uncomfortable waiving the fee forever. She sees this as an incubator period to encourage more commercial activity on Maine Street.

VOTE ON THE MOTION:

Councilor Augur moved, Councilor Sartoris seconded, to waive the fee. The motion carried with five (5) yeas. Opposed: Ewing, King, Ansari.

(A copy of the pertinent ordinance, a picture of the cart, and a drawing of the location, will be attached to the official minutes.)

30. The Town Council will consider amending the Council's Rules of Order and Procedure regarding Executive Session, and take any appropriate action.

Town Clerk Fran Smith said the proposed amendments to Rules of Order and Procedure for Brunswick Town Council include Executive Session, a change which is necessary to bring the Council Rules into compliance with State law.

Councilor Daughtry moved, Councilor Watson seconded, to approve amending the Council's Rules of Order and Procedure regarding Executive Session. The motion carried with eight (8) yeas.

(A copy of a memo from the Town Clerk and the changes regarding executive session will be attached to the official minutes.)

31. The Town Council will consider amending the Council's Rules of Order and Procedure regarding Order of Business, and take any appropriate action.

Ms. Harrington explained that the amendments to the Rules of Order and Procedure for Brunswick Town Council regarding Order of Business would allow for a consent agenda.

Councilor Watson moved, Councilor Ewing seconded, to approve the Council's Rules of Order and Procedure regarding Order of Business. The motion carried with eight (8) yeas.

(A copy of the changes to the Order of Business is attached to the official minutes.)

32. The Town Council will consider accepting Josephine Lane, Adelard Drive, Randall Circle, and the balance of Madeline Drive in the Spruce Pond Subdivision Phase III, and take any appropriate action.

Ms. Harrington said the Public Works Director has inspected the construction and corresponding paperwork and has indicated no objection to the Town's acceptance of the roads. Approval is recommended.

Councilor Schneider moved, Councilor Watson seconded, to accept Josephine Lane, Adelard Drive, Randall Circle, and the balance of Madeline Drive in the Spruce Pond Subdivision Phase III. The motion carried with eight (8) yeas.

(A copy of a letter from the Director of Public Works, a warranty deed, map, and tax declaration, is attached to the official minutes.)

33. The Town Council will consider approving a contract with Brunswick Emergency Communications Officers Association, and take any appropriate action.

Ms. Harrington said the two year contract (July 1, 2005 to June 30, 2007) with the Brunswick Emergency Communication Officers is ready for signing. The contract includes pay increases and health insurance buyback.

Councilor Sartoris moved, Councilor Watson seconded, to approve the union contract with the Brunswick Emergency Communications Officers Association. The motion carried with eight (8) yeas.

(Copies of the Fiscal Note and the approved contract will be attached to the official minutes.)

34. The Town Council will consider approving an asset forfeiture to the Town, and take any appropriate action.

Ms. Harrington explained a memo from Detective Martin S. Rinaldi regarding an asset forfeiture in the matter of State v. Errol Staples, to transfer \$1,110, or any portion thereof, to the Town. She recommended approval.

Councilor Watson moved, Councilor Sartoris seconded, to approve the asset forfeiture of \$1,110, or any portion thereof. The motion carried with eight (8) yeas.

(A copy of a memo from Chief Hinton, one from the Assistant Attorney General, and the Approval of Transfer will be attached to the official minutes.)

35. The Town Council will consider reappointing Harry Darling and Harry Gorman as civil constables for the Town, and take any appropriate action.

Ms. Harrington said this item is to reappoint Harry Darling and Harry Gorman as civil constables. Chief Hinton recommends approval.

Councilor Daughtry moved, Councilor Schneider seconded, to approve reappointment of Harry Darling and Harry Gorman as civil constables for the Town. The motion carried with eight (8) yeas.

(A copy of a letter from Ace Detective & Security Agency will be attached to the official minutes.)

36. The Town Council will consider a Resolution authorizing the Town Treasurer to waive foreclosure on certain real estate tax lien mortgages, and take any appropriate action.

Ms. Harrington said this item is an annual Resolution that the Town Council passes. As the Resolution states, on February 24 tax liens are foreclosed and any property that has not had the taxes paid becomes Town property. Each year the properties are reviewed and a determination is made whether or not it is in the best interest of the Town to foreclose on certain properties. The reason not to foreclose would be that some properties, mobile homes primarily, would cost more for the Town to dispose of than the amount due in taxes.

Councilor Sartoris moved, Councilor Daughtry seconded, to approve the Resolution to authorize the Town Treasurer to waive foreclosure on certain real estate tax lien mortgages. The motion carried with eight (8) yeas.

(A copy the Resolution will be attached to the official minutes.)

Councilor Watson moved, Councilor Daughtry seconded, to adjourn the meeting. The motion carried with eight (8) yeas.

The meeting adjourned at 11:02 p.m.

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
March 13, 2006

March 20, 2006

Date of Approval

Council Chair