

-- APPROVED --
BRUNSWICK TOWN COUNCIL MINUTES
March 6, 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, Newell A. Augur, and Forrest Lowe.

Town Staff Present: Donald Gerrish, Town Manager; Kathy Paradis, Executive Administrative Assistant; Elin M. Gould, Deputy Town Clerk; Patricia Harrington, Assistant Town Manager; Mat Eddy, Economic Development Director; Theo Holtwijk, Director of Planning and Development; Pat Scully, Town Attorney; and TV video crew.

**EXECUTIVE SESSION: 6:45 P.M. Acquisition of Property per 1 MRSA Sec. 405(6)(C)
Union Negotiations per 1 MRSA Sec. 405(6)(D)**

Councilor Daughtry moved, Councilor Watson seconded, to go into executive session pursuant to 1 M.R.S.A. §405(6)(C) and (D) to discuss acquisition of property and union negotiations. The motion carried with eight (8) 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:

Councilor Watson stated that the Cook's Corner Fire substation open house would tentatively be held on July 15, 2006, and that the substation's operational opening is tentatively expected to be in early May.

Manager's Report:

(a) Financial Update

Manager Gerrish reported the Town is eight months through the fiscal year. On the revenue side, excise tax for February was higher than last year but overall is flat, State revenue is ahead of last year, other revenues (building permits and fees) are down from last year, and interest on investments is up considerably. On the expenditure side, the Town is in good shape, mainly because of a mild winter.

(b) LRA Update

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Manager Gerrish announced that Steven Levesque had been hired as the new Director of the LRA and then he thanked Mat Eddy, Director of Economic Development, for the work Mr. Eddy did filling in as the Interim Executive Director of the LRA. Mr. Eddy said that Mr. Levesque is currently at a base closure related meeting in San Diego. He spoke of Mr. Levesque's background and credentials, which include membership on the board of the Loring LRA. Mr. Eddy then proceeded to give the LRA update, which included:

1. The screening process has had four claims of interest from:
 - FAA
 - Air National Guard
 - Army
 - Penobscot Nation

(Claims of interest not honored by the Bureau of Indian Affairs:
Passamaquody and Micmac)

The Final Day for having formal applications for letters of interest is March 22. The Navy must make a decision regarding honoring the letters or announce that the properties are surplus, and begin the local screening process on May 9.

2. The OEA Contract is in place and ready for the Town Manager to sign by week's end.
3. Reminder: the website is BrunswickLRA.org.
4. Advertised for LRA positions: Administrative Assistant, Deputy Director and Property Specialist.
5. The RFP for a Feasibility Study for the FAA has been mailed out on a national basis.
6. Regarding the RFP for a consulting team for the LRA, a decision should be made by mid-April.
7. Waiting to see detailed BRAC budget which should reflect the status of Jacksonville in terms of making the improvements there for the transfer.
8. Defense and Employment Transition Study (DETS) released some of their information for the first time last week regarding base/community impacts.
9. Governor's Advisory Council met for a second time.
10. State received WIRE grant of fifty million dollars geared at assisting in the loss of employment affected by BRAC, specifically the composites and bio-tech industries, among others.
11. Pine Tree Zone Legislation: Speaker Richardson put in a bill (Military Redevelopment Zone) which focuses on giving us assistance through the Pine Tree Zone process.
12. Permanent LRA Legislation presented last week by Speaker Richardson to the legislature.

Mr. Eddy reminded the public that the money for the LRA employees is coming from an OEA grant for one million dollars, plus a match made by the Economic Development Department through the CDBG program of one hundred thousand dollars.

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Councilor Augur also asked Mr. Eddy to remind the public to continue to be involved in the base closure input. Mr. Eddy stated that the public can send comments to the LRA website or come to an LRA meeting (scheduled on the third Wednesday of every month) and talk during the public comment session. Mr. Eddy further stated that the time is near for people with an interest in the local screening process to submit letters of interest.

(c) SusCom Update

Assistant Manager Patricia Harrington gave an update on the SusCom negotiations regarding its sale to Comcast. The next meeting is March 14, 2006, and the deadline for the Town to comment is April 5, 2006. She will bring this item back to the Council before the deadline.

(d) Railroad Update

Manager Gerrish informed the Council the State is going to hold a public hearing on April 6, 2006, to talk about opening the Lewiston lower branch, that section of rail that goes from Brunswick to Topsham, Lisbon and up to Lewiston.

Manager Gerrish also reported he has met with MDOT and the FRA regarding train noise, train idling/storage, and a whistle ban, and learned that there is no federal law prohibiting that from happening. However, there is a proposal in the Maine Legislature to limit the amount of idling time to no more than thirty minutes, but it will be hard to get passed. Another meeting is being scheduled with representatives from the State, Maine Eastern Railroad and Guilford Railroad to discuss this issue and come to an agreement rather than go through the legislative process.

(A letter from MDOT and a copy of the public hearing notice will be attached to the official minutes.)

(e) Council Workshop Updates

Manager Gerrish said there are three upcoming workshops scheduled, as follows:

- March 16 – Recycling
- March 27 – Brunswick Economic Development
- April 10 – Maine Street Station proposal

(f) Tour of BNAS and Fire Substation on 3/11/06

Manager Gerrish said the Council tour of Naval Air Station Brunswick will be held on March 11, 2006, at 8:30 a.m. The group will meet at the new fire substation at Cook's Corner. Upon conclusion of the base tour, the group will have a tour of the substation, as well.

(g) Maine Street Sidewalk Art Sale

Economic Development Director Mat Eddy acquainted the Council with a proposed Sidewalk Art Sale in conjunction with the Brunswick Downtown Association and others, to be held

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August 11 and 12, 2006, and incorporated with Brunswick's Destination Downtown Celebration. Mr. Eddy said he would bring this matter back to the Council for action.

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

(h) Referendum date re Community Health & Land Care Ordinance (Impact on Coffin Pond)

Manager Gerrish told the Council that Recreation Director Tom Farrell has expressed concerns regarding the June referendum on the Community Health and Land Care Ordinance and its impact on Coffin Pond. Legal counsel confirms that the passage of the ordinance will eliminate the ability of the Recreation Department to chlorinate Coffin Pond. However, even if the ordinance does not pass there is a problem, and that is obtaining qualified lifeguards in a market where they are in high demand. Some lifeguards have already expressed hesitation about committing to these jobs when the fate of Coffin Pond will not be known until June. Mr. Gerrish will bring this back to the Council at the March 20, 2006, meeting.

Adjustments to Agenda: None.

19. (Tabled) The Town Council will consider the enactment of an Ordinance entitled "Brunswick Rural Smart Growth Ordinance," and take any appropriate action.

Chair King and Manager Gerrish stated that the Council has to act at this meeting and it has two options: send this proposed ordinance to referendum, or enact it.

Chair King opened the public hearing.

Todd Buchheit, 105 Collinsbrook Road, spoke against the ordinance, saying that it is flawed, that the process is wrong. He disputes the Council's authority to change the petition by, in essence, conditioning its passage on the proposed amendments. He talked about recommended land management objectives by permanently preserving key areas of habitat through outright acquisition or conservation restrictions, rather than the Smart Growth objectives. He recommended a progressive approach rather than an aggressive approach at land management. He asked the Council to consider letting the voters decide the matter. Mr. Buchheit ended with the question, "Why have we gone to the most restrictive legislative approach before trying to use recommended management strategies in a progressive fashion?"

Bob Muller, 197 Hacker Road, said he grew up in Brunswick and is personally affected by this ordinance. He said this is a citizens initiative, brought about by the citizens, for the citizens, and he supports the process. This ordinance is not about land but about citizens. He questioned the interpretation of the Charter and the legal guidance given to the Council. He said there is an issue of accountability; this will not withstand challenge. There was a stacked deck in studying the open space part of the Comprehensive Plan, and the results were flawed. Ninety-six percent of the landowners in the overlay did not sign the petition. There is a long term impact on the Town; this is not about an insignificant ordinance. The citizens should not be denied the right to vote.

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Steve Prescott, 102 Echo Road, spoke in favor of the proposed ordinance and the proposed amendments. He urged the Council to vote them in this evening.

Penny Mains, Weed Way, said she has been opposed to the ordinance from the beginning, but now feels it should go to referendum. The proposed amendments are not enough.

Scott Fraser, 623 Durham Road, is still opposed to the ordinance. He hired an attorney to see how it would affect him and the attorney told him it is the poorest written document he has ever seen.

Suzan Wilson, 6 Bunganuc Road, said what is most troubling is the circular logic and shifting rationale. The ordinance further expands the reach and intrusiveness of the Planning Department. Citizens should weigh in at the earliest opportunity for referendum.

Fred Horch, 44 Pleasant Street, spoke in support of the ordinance and the amendments. Sprawl is expensive and that is why people in other districts care.

Bruce Clark, 565 Highland Road, said to send the ordinance out to the voters.

Louisa Hart, 9 Jordan Avenue, spoke in favor of the ordinance and the amendments. She said there was a process that included compromise. It is a fair and far sighted ordinance and protection is needed now before the habitat disappears.

Ann Weed, 41 Weed Way, said those affected have protected the habitat; it is the newcomers who are bringing in projects and sprawl. She would like to see the ordinance go to referendum.

Brooks Stoddard, 171 Bunganuc Road, said he is a resident and landowner. He said the people from away are a blessing as they recognize what has happened elsewhere. Any development will raise taxes. He suggested developing a fund to buy up land to keep taxes down. Good work has been done and this is very important for the future of Brunswick.

Hearing no further comments, Chair King closed the public hearing.

Councilor Sartoris moved, Councilor Lowe seconded, to enact the Brunswick Rural Smart Growth Ordinance as provided by citizen petition as filed with the Town Clerk on January 9, 2006.

Councilor Sartoris said this ordinance is a product of a great deal of good work. She had been skeptical but now is convinced the Charter provides for enacting and amending the ordinance in this manner. She would have been happy to pass the ordinance as it was, or have the citizens vote on it. It cannot be amended and then put out to vote. She had invited citizens who signed the petition to contact her or any other Councilor to say let the voters decide, but none did. She is pleased the issue is getting over with this evening.

Councilor Lowe said people appreciate the rural character of Brunswick and the concerns of affected landowners. The fact is if no ordinance is passed, sprawl will occur, as has been seen in

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the southern part of the state. It is a complicated but fair ordinance. He said most data shows this kind of preservation increases the value of property, and with this ordinance landowners can develop more than with the current ordinance. Protecting animal habitats is part of maintaining the rural character of Brunswick. He would not vote for the ordinance if he thought there would be significant financial harm done. He would support the ordinance this evening even without the amendments.

Councilor Daughtry said she feel it will pass if it goes out to referendum. She has studied, listened and tried to address the issues brought up. She said there is a perception that this is a taking of property, which it is not, it is a zoning ordinance. She will not pass the buck, but will listen to the majority of her constituents and her conscience and vote for adoption of the ordinance and the compromise amendments.

Councilor Ansari said she is a steward of this earth and its people. She loves the rural character of parts of Brunswick. The idea of protecting wildlife and their corridors so that they can flourish is admirable but it is the manner in which this idea will be achieved with this ordinance that she disagrees with. This is a taking of property. Litigation is assured if the ordinance passes, and that will be costly to citizens. It is not right or honorable to force landowners to do what is asked in the ordinance. She will not support the ordinance or the amendments.

Councilor Schneider said he feels he is representing his district accurately and he is prepared to vote tonight. The nature of the ordinance is government knows best. The people of Brunswick have done a good job, and, as he has said in the past, land conservation groups should buy up some of the wildlife land. He will not support the ordinance or the amendments.

Councilor Watson said the ordinance is defective. He cannot vote for it, however, he could let it go to referendum. His constituents in District One are against the ordinance.

Councilor Ewing said there were valid points on both sides. He understands the need for protection of habitat. The ordinance, as presented, has problems, and can be amended. He said he thought it would pass if it went to referendum; however, he would rather make the improvements now. His constituents in District Six are in favor of the ordinance.

Councilor Augur said the amendments being offered are reasoned and a necessary step to not choose between two extremes. He said 30% of rural habitat has disappeared in the last twenty years; we cannot stop the development but can say we want it to happen near existing roads, not in wildlife habitats in such a way as it will be destroyed. The window of opportunity is closing. He will support the ordinance and the package of amendments.

Chair King said there are no checks and balances in the system. Litigation is costly, and this is taking without compensation. The ordinance does not address sprawl. As to the petition issue, she advocates sending the ordinance to referendum. She referenced an opinion piece in the Times Record that stated the issue as she sees it. Proof of the level of support for an issue is in the voting booth. It should be voted on as is, or sent to referendum, the amendments send the wrong message, showing no respect for the democratic process. She is confused by the logic of sending the Community Health and Land Care Ordinance to referendum and not this one. This

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vote will be divided and the issue will not be over. Her newest concern is the loss of native Brunswick residents.

VOTE ON THE MOTION:

Councilor Sartoris moved, Councilor Lowe seconded, to enact the Brunswick Rural Smart Growth Ordinance as provided by citizen petition as filed with the Town Clerk on January 9, 2006. The motion carried with five (5) yeas. Opposed: Watson, Schneider, King, Ansari.

(The Town Clerk's certification and the full text of the ordinance will be attached to the official minutes.)

38. The Town Council will consider approving the proposed amendments to the Brunswick Rural Smart Growth Ordinance, and take any appropriate action.

Chair King opened the public hearing.

Lisa Martin, 185 Hacker Road, thanked the Councilors for their foresight in voting in the ordinance. She said she and the other petitioners support the amendments.

Bruce Clark, 565 Highland Road, said that generally the amended version is better than the original, however; two things were not addressed by the amendments: sharing the burden, and the tax situation, which he said, after speaking with the Assessor, is unclear. He also asked when signatures could be collected for a petition drive.

Pat Scully, Town Attorney, said the Charter is not crystal clear on this. He referred to Town Attorney Geoff Hole's interpretation that the petition process should not begin until six months has expired. He went on to explain that the amendments are not under the same process as the newly passed citizen initiated ordinance. The repeal process for the amendments can begin immediately.

Responding to Councilor Lowe's question, Mr. Scully said the twenty day window for the repeal process on the ordinance would apply at the end of the six month period.

Chair King closed the public hearing.

Councilor Ewing moved, Councilor Augur seconded, to approve the amendments to the Brunswick Rural Smart Growth Ordinance.

Councilor Sartoris reiterated her previously stated reasons surrounding the lack of interest by the petitioners in working with the Council, for choosing the amendment process in this case rather than the referendum process that the Council approved for the Brunswick Community Health and Land Care Ordinance. She went on to say this is not a taking, there is no financial loss, and that the Assessor believes the properties affected will be worth more, not less, than under the current ordinance. This constitutes the taking only of peoples will to do what they want. She supports the amendments.

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Councilor Lowe said initially he had significant concerns regarding the citizens initiative, but that he was not fond of the Charter's provision for the process as a whole. He said the difference here is that the ordinance went through the normal process, it was vetted by the Planning Board and changes were considered.

Councilor Augur said the distinction between this ordinance and the biosolids one is that one is regulated by State law and Brunswick has no jurisdiction. This ordinance has authority resting with the people of the Town as represented by the Council. He also said there are different definitions of sprawl and that this addresses the affect of sprawl on wildlife habitats. He said it was a very good ordinance, as amended.

Councilor Daughtry said she hopes this is an ongoing process which will be revisited to improve it. She will support the amendments.

Councilor Ansari said she will not support the amendments. She agrees with Mr. Clark's comments regarding sharing the burden.

VOTE ON THE MOTION:

Councilor Ewing moved, Councilor Augur seconded, the approve the amendments to the Brunswick Rural Smart Growth Ordinance. The motion carried with six (6) yeas. Opposed: Schneider, King, Ansari.

(A copy of the public hearing notice, a memo from Steve Walker and Theo Holtwijk, and the revised version of the ordinance incorporating the amendments, will be attached to the official minutes.)

39. The Town Council will discuss requesting the Planning Department to draft ordinance amendments regarding Transfer of Development Rights to the Zoning Ordinance and sending same to the Planning Board for review, and take any appropriate action.

Councilor Ewing said this is an outgrowth of an idea in the Smart Growth amendments.

(A copy of Councilor Ewing's memo describing how the program would work is attached to the official minutes.)

Theo Holtwijk, Director of Planning and Development, said this is an interesting but not necessarily an easy, concept. He said there are six states that have TDRs , including Maine (Cape Elizabeth). He supports the concept but cautioned the Council to be prepared to hear from the Planning Board that it is worthwhile but there may be better ways to accomplish the same goals.

Councilor Sartoris asked if what Mr. Holtwijk was saying was that the idea of transfer of development rights may be unworkable in Brunswick for a variety of reasons, but that the discussion and review itself could benefit the Town by having other recommendations that could work in Brunswick.

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Mr. Holtwijk responded in the affirmative, saying that it tackles the all important issue of growth in the Town as a whole, not just the rural area.

Councilor Ewing moved, Councilor Daughtry seconded, to request the Planning Department to develop a proposal for a Transfer of Development Rights (TDR) program for Brunswick, and to further request that such a proposal be reviewed by the Planning Board and prepared for Council review as soon as possible.

Councilor Sartoris proposed adding “or other appropriate alternatives” to the motion. Councilor Ewing and Councilor Daughtry agreed and amended their motion accordingly.

AMENDED MOTION:

Councilor Ewing moved, Councilor Daughtry seconded, to request the Planning Department to develop a proposal for a Transfer of Development Rights (TDR) program for Brunswick, or other appropriate alternatives, and to further request that such a proposal be reviewed by the Planning Board and prepared for Council review as soon as possible. The motion carried with nine (9) yeas.

40. The Town Council will consider setting a public hearing for the authorization and expenditure of funds regarding Jordan Avenue, and take any appropriate action.

Manager Gerrish explained that any project which costs over one million dollars must be done by ordinance. The current cost estimate is \$1,684,000. At this time the proposal is for the funds to come from fund balance. He recommended setting a public hearing for March 20, 2006.

Councilor Augur asked what this would do to the Town’s rating with bond agencies since it appears those agencies may be looking for Brunswick to increase its fund balance.

Manager Gerrish said it is possible the Town may be better off to bond this project; however, he does not know yet. Responding to Councilor Lowe’s question, Manager Gerrish said a second public hearing would need to be held if the funding source is changed to a bond rather than the fund balance currently being proposed. Responding to Councilor Watson’s question regarding project costs at the time of construction, he noted that the cost, as laid out in the Public Works Director’s memo, have been updated and a ten percent contingency is included.

Roy Peddle, 4 Lori Drive, described the deplorable condition of Jordan Avenue and urged the Council to go forward with the project.

Councilor Schneider moved, Councilor Daughtry seconded, to set a public hearing for March 20, 2006 on the Appropriation Ordinance regarding the Jordan Avenue Improvement Project. The motion carried with nine (9) yeas.

(A copy of the memo from John Foster will be attached to the official minutes.)

41. The Town Council will consider the following requests for Sellers of Prepared Food on Public Ways on the Brunswick Mall, and take any appropriate action. (Manager)

**Brunswick Farmers Market Association
Danny's Dogs - Sean McDonald
Wrapper's – Wayne & Kathleen Parent
Downeast Hot Dogs – Sandra Webber**

Manager Gerrish explained that the ordinance provides for the Farmer's Market and four food vendors, to be considered at the first Council meeting in March annually. There are three applicants in addition to the Farmers' Market at this time. Manager Gerrish said the applicants' fees have been paid and the insurance requirements have been met and he recommended approval. He also said that Danny's Dogs and Wrappers were on the Mall last year, and that Downeast Hot Dogs was not on the Mall last year but had been in previous years.

Since no picture of the Downeast Hot Dogs cart was available to them, the Council asked that one be provided for the March 20, 2006 Council meeting and the application for Downeast not be considered until that time.

Councilor Sartoris moved, Councilor Watson seconded, to approve Sellers of Prepared Food on Public Ways licenses for Brunswick Farmers Market Association, Danny's Dogs, and Wrappers. The motion carried with nine (9) yeas.

42. The Town Council will consider adopting Town Council Goals for 2006, and take any appropriate action.

The Council reviewed the proposed goals that had been ranked by priority by each Councilor. Manager Gerrish suggested removing Jordan Avenue and the Comprehensive Plan update from the goals as both are a given to be accomplished this year. He also suggested combining the facilities and LRA goals as they go along with one another.

Councilor Lowe agreed with taking off the Jordan Avenue goal, but thought the facilities and LRA goals should remain separate as the LRA goal is much broader than the facilities goal. He also suggested changing the wording on the recycling goal to say "Review and take action on" rather than "Effectuate" a recycling plan.

Councilor Daughtry agreed with Councilor Lowe regarding the LRA, with the Manager's suggested deletions.

Councilor Sartoris agreed with the general direction saying the Comprehensive Plan Committee is currently revising its plan to include place holders for the base, which was not in play when the bulk of the Comprehensive Plan work was done. As to the Lands for Brunswick's future, Councilor Sartoris said a Board needs to be established to meet and prioritize land even if it is not funded. The funding initiative should be separate. She also said the goals represent a doable amount of work.

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Councilor Augur disagreed with combining facilities with the LRA goal. He also noted that Smart Growth, while not on the list of goals because it was completed this evening, has already taken up one sixth of the Council's time this year.

Councilor Ansari agreed with the separation of the facilities and LRA goals, and with Councilor Sartoris regarding the separation of the investigation and funding aspects of the lands for Brunswick's future goal.

Councilor Augur pointed out that the Jordan Avenue goal presupposes an action, which has not yet been taken.

Chair King agreed with Councilor Ansari regarding the Lands for Brunswick's Future, saying that she does not envision money in the budget for it this year.

Councilor Sartoris reversed her earlier opinion and said that the Comprehensive Plan and Jordan Avenue goals should remain as a great amount of time will be spent on them. Councilors Ansari, Daughtry, and Schneider then concurred.

Manager Gerrish then suggested that the wording of the Jordan Avenue goal should be to "Review the Jordan Avenue project and take action," rather than "Complete the Jordan Avenue project."

Councilor Watson moved, Councilor Ansari seconded, to approve the 2006 Council Goals, as amended. The motion carried with nine (9) yeas.

(A copy of the adopted 2006 Council Goals will be attached to the official minutes.)

43. The Town Council will consider approving an Agreement and Permit to allow an MDOT contractor to transport construction equipment that exceeds legal weight limits over municipal roads, and take any appropriate action.

Manager Gerrish said this is a normal process with a State project. This project is for a six and a half mile section of I-295 northbound. He recommended approval.

Councilor Ansari noted there was a provision regarding the State's responsibility to repair any destruction or damage.

Councilor Sartoris moved, Councilor Schneider seconded, to approve an Agreement and Permit to allow an MDOT contractor to transport construction equipment exceeding legal weight limits over municipal roads. The motion carried with nine (9) yeas.

(A copy of a letter from MDOT and the agreement will be attached to the official minutes.)

44. CONSENT AGENDA:

- (a) Minutes of February 6, 2006 Town Council meeting
- (b) Minutes of the February 27, 2006 Special Town Council meeting

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(c) Reappointment of Steve Walker, Natural Resources Planner, as Harbor Master

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

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

The meeting adjourned at 10:15 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.

*Elin M. Gould
Deputy Town Clerk
March 10, 2006*

March 20, 2006

Date of Approval

Council Chair