

-- Approved --
BRUNSWICK TOWN COUNCIL MINUTES
November 1, 2004
7:00 p.m.
Municipal Meeting Facility

7:00 p.m. Chair Lowe called the meeting to order and asked for the Pledge to the Flag.

Councilors Present: Chairman Forrest Lowe, W. David Watson, Jacqueline A. Sartoris, Douglas A. Rice, Charles R. Priest, Barbara A. Desmarais, Robert Galloupe, Joanne T. King and Stephen H. McCausland

Councilors Absent: None

Town Staff Present: Donald H. Gerrish, Town Manager; Assistant Town Manager Patricia Harrington, Director of Planning Theo Holtwijk; Mary T. Cronk, Exec.Admin.Asst.; the TV video crew and members of the public.

Public Comment:

Lisa Martin, 185 Hacker Road: As Chairperson of the Friends of Cox Pinnacle, Ms. Martin wanted to respond to the Council's vote not to grant a conservation easement on Cox Pinnacle. The Friends of Cox Pinnacle were disappointed with the outcome and the manner in which the decision was made. The Friends of Cox Pinnacle had expected to be given an opportunity to address the Council at the meeting. Facts were not presented accurately and the Recreation Commission was not given time to weigh in with its recommendation and the Friends of Cox Pinnacle views were not heard.

The next step for the Friends of Cox Pinnacle will be to communicate the outcome of the Council vote to all donors in the next two weeks. The Friends of Cox Pinnacle want to clearly represent the intent of the Council vote, and so request clarification on several aspects of it:

1) Councilor Rice's motion stated that the Council would continue as a Council to protect the property from development in agreement with the people who raised 50% of the funds. For the record, is there a specific agreement that Councilor Rice is referring to. What form with this agreement take – will it remain a verbal promise or will it be formalized in some sort of document?

2) Friends of Cox Pinnacle are unclear about the status of the partnership? Will the Town entertain discussions with them regarding future land uses on the

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property? What sort of latitude will the Friends of Cox Pinnacle be given to decide how to raise the excess funds that were raised?

3) What steps will the Council take to ensure that future public/private partnerships can proceed with clear guidelines for establishing mutually acceptable protection for future land acquisitions?

Councilor Lowe apologized for not inviting Lisa Martin to speak during the discussion of the conservation easement at the October 18 meeting.

Correspondence:

The Town Manager shared a letter from Norm Rattey, who is a member of the Zoning Board of Appeals. Mr. Rattey's appointment is up and he is stating that he would not like to be reappointed, as he has served 18 years and is now interested in pursuing other activities. He will continue to serve on the Board until a replacement is found.

Councilor Priest asked if there had been any correspondence from the Water District regarding the motion on televising meetings. The Town Manager reported that he had not.

Manager's Report:

a) Financial Report

Four months of the fiscal year have passed. On the Revenue side, the State Revenue Sharing and the Excise Tax are both where anticipated. Since the landfill fees were increased at the start of the new fiscal year, one of the major trash haulers has decided to take trash elsewhere. The fee structure will be revisited to see where the revenue for the enterprise account will be. On the other side, by losing tonnage the life expectancy of the landfill is increased.

b) Workshop schedules

The Council has a few workshops pending. The Town Manager suggests a workshop on the Central Fire Station on November 29, 2004. On December 13 the Council could hold the workshop on the Aquifer Protection Zone. Chairman Lowe polled the Council and it was determined that the proposed dates would work. Councilor Desmarais wanted to make sure that the Water District will be invited to the December 13 workshop. Councilor Sartoris wanted to know if the public will be allowed to make comments at the workshops. Chairman Lowe stated that the public would be invited to make comments after the

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presentations have been made. Councilor King wanted to know if the Council would be taking formal action, particularly in regards to the Central Fire Station, during the month of December. Chairman Lowe stated he would like to see things move ahead expeditiously, but everyone will have a better sense of what will happen after the workshops.

c) **Update on privatization of Navy housing**

An agreement has been signed and it will go into effect very soon. Town Manager Gerrish wanted to publicly thank Asst. Town Manager Patricia Harrington for the work she did on this project. The agreement is for five years, and is for 463 housing units. The Town will receive \$544,000 in payment from the Navy, paid quarterly. The Town was unable to get an escalator clause in the agreement – the Town got the CPI at a maximum of 3% for annual adjustments. The Town will be keeping a log of the calls that are received and how they affect the police and fire departments.

d) **Veteran's Day Trash Schedule**

The Town Manager reminded everyone that there will be no collection of trash or recyclables on Thursday, November 11 which is Veteran's Day. The makeup day for trash will be held on Saturday, November 13. Recyclables should be held until the following week, as the Town does not have a make up day for recyclables.

e) **State Planning Office Coastal Watershed Grant**

Theo Holtwijk gave the Council a quick overview of the grant and how it is to be used. The Town is the fiscal agent for the New Meadows River Watershed Project has been awarded \$15,000 to continue work on the scientific aspects of the project. A "nutrient flux study", a water quality index and an expansion of the volunteer water sampling efforts will be done with the funds.

Councilor Sartoris was concerned about the wording of the grant, which stipulates that all funds must be expended by December 31, 2004. Mr. Holtwijk stated that he was sure this could be accomplished, but that the deadline could be extended by a request, if necessary.

Councilor Watson moved, Councilor King seconded to accept and expend the Watershed Grant. The motion carried with nine (9) yeas.

182. The Town Council will hear public comments on the following requests for Food Service licenses and will take any appropriate action.

Food Service with Malt, Vinous and Spirituous Liquor

Innovation, Inc. d/b/a Back Street Bistro
11 Town Hall Place

Innovation, Inc.

Food Service with Mobile Carts, Take Out and Catering

Samuel W. Lambert & Marie B. Sheffield
d/b/a Udder Place Coffee Co., LLC
154 ½ Pleasant Street

Samuel W. Lambert & Marie B. Sheffield

Chairman Lowe opened the public hearing; hearing no comments, he closed the public hearing.

Councilor Sartoris moved, Councilor Desmarais seconded, to approve the request for the two food service license applications. The motion carried with nine (9) yeas.

(A copy of the public hearing will be attached to the official minutes.)

183. The Council will consider accepting the dedication of a turnout easement on the Rich Road from Michael and Sandra Ouellete. The Council will also consider approval of the Discontinuance Order and the Consent to Discontinuance for Rich Road. If both the Discontinuance Order and the Consent to Discontinuance are approved, the Council will order that they be filed with the Town Clerk. (Manager)

The Town Manager explained that this was a continuation of the Discontinuance process that was started on October 18. Everything has been reviewed by the Town Attorney and by the Town Engineer, and it is recommended that the Council approve the discontinuance.

Councilor Sartoris moved, Councilor Desmarais seconded, to approve the Discontinuance Order and the Consent to Discontinuance. The motion carried with nine (9) yeas.

(A copy of all documentation related to the Discontinuance will be attached to the official minutes.)

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184. The Town Council will receive a report concerning using Big Box fees for the Cook's Corner Master Plan for Housing Study and will take any appropriate action. (Manager)

Theo Holtwijk that the Cook's Corner Master Plan for Housing Study was to be paid for by "Big Box" fees, as explained to the Council previously. Since that time, progress on the planning for the study has taken place. As a result of work done in planning for the study, the scope of the work has expanded and as a result, there has been an increase in the projected cost. A revised proposal has been prepared by Planning Decisions (the consultant) and it has been approved by the Planning Board. Although the cost has increased, there are sufficient funds in the Big Box account to cover the scope of the work.

The Town Attorney wanted to make sure that the fees were being used appropriately, and he has recommended some text amendments to make it clear that the Big Box fees can be used for studies, as well as for physical improvements. Also, he wanted to make sure that the Big Box funders were in agreement with the use of the funds for studies. Samuels Associates (Lowe's) has approved the use of the funds for this purpose.

The Council is being asked for endorsement of the revised proposal, for authorization to use Planning Decisions as the consultant for the study, and last of all to use \$56,000 from the Big Box fee account.

Councilor King asked why the cost has increased so much from the original presentation to the Council. Mr. Holtwijk responded that the scope of the work has increased dramatically since then.

Councilor Watson asked for clarification on how many different collections of fees are involved in a development, and Mr. Holtwijk explained that Big Box fees are separate from impact fees. Big Box fees are collected when a developer wants to build a single retail "box" over 50,000 sq. ft, but no bigger than 250,000 sq. ft. The developer must come with a plan that makes community improvements, either on the developer's site or somewhere else within Cook's Corner. If the developer does not do the community improvements on their own, they can elect to make a cash payment to the Town.

In response to Councilor McCausland's concern that this would be yet another study that is prepared, read and then filed away never to be used again, Mr. Holtwijk explained that when this project is complete there will be a physical site plan of Cook's Corner (particularly the back land – 200 or so acres) that will have a layout of a housing development plan, the infrastructure necessary to support it, and how much the plan would cost.

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Councilor Desmarais stated she sees this as an opportunity to design Cook's Corner and to promote the kind of development that the community wants.

Councilor Desmarais moved, Councilor Priest seconded, that the Council approve the revised scope of the Cook's Corner Master Plan for Housing Study, authorize the hiring of Planning Decisions, Inc. to perform the study and approve the use of \$56,000 from the Big Box fee account to fund the study. The motion passed with nine (9) yeas.

185. The Town Council will receive a report on negotiations with Sus-Com for renewal of the Cable TV franchise and will take any appropriate action. (Manager)

Town Manager Don Gerrish stated that Patricia Harrington, Assistant Town Manager, had worked on this with the Council committee, and turned the presentation over to her. He also took a moment to publicly thank her for her work on the privatization of Navy Housing that was discussed during the Manager's report.

Ms. Harrington reviewed the proposed franchise agreement between the Town of Brunswick and Casco Cable Television (Sus-Com). The original agreement that was signed in 1982 expired on December 31, 2003, at which time the Council extended it for three additional months. The agreement allows for the use of the Town's streets and public ways for construction of a cable system and to provide cable television to the Town's residents. This is not an exclusive agreement – another cable company could come in and enter into another agreement with the Town, although it is highly unlikely that would happen.

By federal law, the Town does not have the authority to regulate cable rates or programming. The Town can regulate up to 5% of the gross revenues for the Town as a franchise fee, which is what the town requires, but no more than 5%.

As part of the renewal process, the Town updated the Cable TV Regulatory Ordinance, looked at community needs in terms of local access, looked at franchise fees and customer service, and also did a thorough technical analysis to see what may be improved in the community.

During the course of the negotiations, the Cable TV Franchise Committee did research nation-wide to look at system upgrades, what could be done to improve customer service, how to acquire funds for the local access channel for facilities and equipment, and finally, to look at linkages between all of the municipal buildings and government institutions to improve communication between those institutions and also the public.

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One of the areas of concern identified was the concept of extension of service. The previous agreement stated that areas with a density of 20 homes per mile would receive cable service. That left 144 homes in the community that did not get cable. Although the committee tried to negotiate for universal service (all residents served), the final agreement allows for a current density of 17 homes per mile for new construction and for those currently not served a density of 10 homes per mile. This will reach approximately 95 of homes that are currently not served.

In regards to system upgrades, the previous agreement had a system of 550 mega-hertz. The new agreement upgrades that to 750 mega-hertz, which should provide the capacity necessary to provide all the services the Town is looking for. Sus-com is required to do this within the next 18 months.

The former agreement allowed for four local access channels – although the Town is currently only using one. There is intent to provide more channels in the future, and the proposed agreement retains the ability to have four channels. Two of the channels would be available immediately, and the third and fourth would be available on 60 days notice.

During the research phase, the Committee learned that Brunswick citizens want to be able to watch local channels from other communities: Bath, Topsham, and other neighboring towns. The Bath channel will continue to be available, but programming from Topsham will have to be broadcast from tape over the Brunswick local channel at this time.

There will be free cable television to four locations within the Town and free cable modems to the library, and also a 50% discount on cable to municipal buildings and reimbursement up to \$15,000 for the Town's legal and consulting fees.

Sus-com will provide an annual report, due by April 1 each year. The term of the Agreement will begin on the date that the agreement is signed. The franchise fee will remain at 5% of gross annual revenues and dedicated fiber will be installed between the municipal buildings, which will be part of a connection between the buildings to allow for an I-net system.

There is now a system in place that allows for fines if Sus-com does not maintain its level of required customer service. Telephone calls will be answered within thirty seconds. A written complaint policy will also be implemented, which allows for fines for failure to repair, failure to respond, etc.

The negotiated agreement also provides for equipment funding – to assist in purchasing PEG access equipment for the local access channel and also to connect the dedicated fibers for the creation of an I-net system for the Town. Thirty days after the agreement is signed, the Town will receive a check for

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\$136,637, and will receive \$9,000 annually in years two, four, six and eight of the agreement.

The Cable TV Ordinance passed last summer requires a public hearing on the proposed Franchise Agreement, and Council is being asked to set the public hearing for November 15.

Councilor McCausland complimented Patricia Harrington and Patrick Scully for their work on this complicated negotiation. He stated that the Committee has done the best it can to get the best agreement for the community. He stated again that there is no local control on the rates, which he understands is an irritating issue for subscribers, since the rates have increased every year. He also stated that the I-net will be an enormous benefit for the Town, with communications between all branches of municipal government being enhanced. The new regulations concerning customer response should be very effective in improving service, now that there will be oversight and also reaction from the Town if the criteria are not met.

Councilor McCausland moved, Councilor Watson seconded, to set a Public Hearing on the Cable TV Franchise Agreement on November 15, 2004.

Councilor Priest asked if the \$136,000 payment that is forthcoming will be dedicated revenue for the Cable TV channel, and Town Manager Gerrish stated that it would be.

Councilor King asked what the process will be for customers who may have a complaint on service – should they call the Town office to file their complaint? Ms. Harrington responded that customers should call Sus-com first if they have problems. If there is no response, or if there are problems with the response, the Town Office number is on the back of the bill, and the customer should call.

Councilor McCausland reminded everyone that there is also going to be an annual report from Sus-com which will be an opportunity for the Council to review the Cable TV service that is provided.

Councilor Priest took a moment to compliment John Goran for his efforts with the local access channel and also with the franchise agreement.

Councilor Watson asked how the fine structure will work, where and when will the fines be paid and how will they be accounted for. Attorney Pat Scully explained the section of the Franchise Agreement that addresses fines. There are different penalty amounts, based on what violation has occurred. The penalties are assessed by the Town and collected by the Town. The fines will go into the general revenue fund.

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Councilor Sartoris asked about the 30 second phone response provision and was assured by Pat Scully that the 30 second response was to a live voice, not an electronic menu. Councilor Sartoris also wanted to make it clear that the customer service requirements only apply to television, not to Internet access. Pat Scully stated that was true, that the only control the Town had was over cable TV, and not over cable modem service, which is access to the internet. This could change in the future, but for now there is no control over internet access.

The motion carried with nine (9) yeas.

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

Councilor Sartoris nominated Melvin Tukey to the Village Review Board, William Lamb to the Zoning Board of Appeals, and Mary Heath to the Maine Street Station Design Committee.

Councilor Sartoris moved, and Councilor Priest seconded, that the nominations cease and that the nominations be made. The motion carried with nine (9) yeas.

Chairman Lowe reminded everyone present and those watching that the polls in Brunswick would be open from 8:00 a.m. to 8:00 p.m. He encouraged everyone to get out and vote.

The meeting adjourned at 8:15 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.

Mary Tilas Cronk
Executive Administrative Assistant
November 9, 2004

Approved by Council

Council Chair