

BRUNSWICK TOWN COUNCIL MINUTES
May 15, 2000
MUNICIPAL MEETING FACILITY

7:30 P.M. Chair McCausland called the meeting to order and asked for the Pledge to the Flag.

Councilors Present: Chair McCausland, Michael Feldman, Eleanor Swanson, Robert Galloupe, Timothy Dotts, Clement Wilson, Faith Moll, Forrest Lowe, and David Gleason.

Councilors Absent: None

Others Present: Donald Gerrish, Town Manager; Deborah Cabana, Town Clerk; Theo Holtwijk, Director of Planning and Development; several citizens; members of the press and TV video crew.

Correspondence: NONE

Manager's Report:

1. **Update on Memorial Day Parade.** Manager Gerrish outlined the activities for the annual upcoming Memorial Day Parade. The parade will begin in Topsham, travel across the bridge and the program on the Mall will start around 10:40 a.m.

Adjustments to the Agenda: Manager Gerrish requested that the Council waive the rules and add Item #93 - The Town Council will consider approval of the Elections Clerks for years 2000 and 2001. There was no objection to adding this item.

Items #85, 86, 87, and 88 were considered together. The public hearing opened at 7:35 p.m. The public hearing closed at 7:35 p.m.

- 85. The Town Council will hear public comments on the following requests for Victualer License and take any appropriate action.**

NEW

Rumrunner's Inc. d/b/a Player's Pub
1 Center Street

Lori Lee Roberts

RENEWALS

114 Renewals as attached

- 86. The Town Council will hear public comments on the following requests for Alcoholic Beverage Licenses and take any appropriate action.**

NEW:

Rumrunner's d/b/a Player's Pub
1 Center Street

Lori Lee Roberts

Wayne Alexander d/b/a Ye Olde English Fish & Chips
17 Bow Street

Wayne F. Alexander

RENEWALS:

Somplaces Different, Inc. d/b/a Captain Daniel Stone Inn & Narcissa Stone Restaurant

10 Water Street
Town Council Minutes
May 15, 2000
Page 2

Louise C. Holmes

Harriet Beecher Stowe House & Inn LLC d/b/a Harriet Beecher Stowe House & Inn
63 Federal Street

George D. Elwell

Parkwood Inn, Ltd. d/b/a Parkwood Inn
71 Gurnet Road

Lois E. Beal

Rumrunners, Inc. d/b/a Player's Pub
1 Center Street

Peter M. Therriault

The Corner Pocket, Inc. d/b/a The Corner Pocket
4 Pleasant Street

David Burnette

Henry's Catering, LLC d/b/a Henry & Marty
61 Maine Street

Edward M. Perry

P & M Corporation d/b/a Captain Mike's Restaurant
32 Bath Road

Michael C. Cote

87. The Town Council will hear public comments on the following requests for Special Amusement Licenses and take any appropriate action.

NEW:

Rumrunners, Inc. d/b/a Player's Pub
1 Center Street

Lori Lee Roberts

RENEWAL:

Somplaces Different, Inc. d/b/a Captain Daniel Stone Inn & Narcissa Stone Restaurant
10 Water Street

Louise C. Holmes

Harriet Beecher Stowe House & Inn LLC d/b/a Harriet Beecher Stowe House & Inn
63 Federal Street

George D. Elwell

Rumrunners, Inc. d/b/a Player's Pub
1 Center Street

Peter M. Therriault

88. The Town Council will hear public comments on the following requests for Innkeeper's Licenses and take any appropriate action.

RENEWALS:

11 Renewals as attached

Councilor Moll moved, Councilor Swanson seconded, to approve the Victualer Licenses, Alcoholic Beverage Applications, Special Amusement Licenses (Harriet Beecher Stowe House limited to current restrictions) and Innkeepers Licenses as advertised. The motion carried with nine (9) yeas.

90. The Town Council will consider approving Voter Registration hours for the June 13, 2000 State Primaries and take any appropriate action.

This item is to consider approving Voter Registration hours for the June 13, 2000 State Primaries. Proposed Hours are from 1-7p.m. June 5th through the 7th and 1-4:30p.m. June 8th and 9th.

Town Council Minutes
May 15, 2000
Page 3

Councilor Lowe moved, Councilor Wilson seconded, to approve the Voter Registration hours for the June 13, 2000 State Primaries, as proposed. The motion carried with nine (9) yeas.

91. The Town Council will consider approving the Wardens and Deputy Wardens for the June 13, 2000 election and take any appropriate action.

Councilor Dotts moved, Councilor Feldman seconded, to approve the Wardens and Deputy Wardens for the June 13, 2000 Election as proposed. The motion carried with nine (9) yeas. *A copy of the list will be attached to the official minutes.*

92. The Town Council will consider approving a Municipal Quitclaim Deed for Conseco Finance Corporation and take any appropriate action.

Councilor Feldman moved, Councilor Lowe seconded, to approve the Municipal Quitclaim Deed for Conseco Finance Corporation. The motion carried with nine (9) yeas.

93. The Town council will consider approving the Election Clerks for the years 2000 and 2001.

The Municipal Officers must appoint the Election Clerks for the Town by May 1st of each even numbered year. *A list of the Election Clerks nominated by the Democratic and Republican parties will be attached to the official minutes.*

Councilor Wilson moved, Councilor Dotts seconded, to approve the list of Election Clerks for the years 2000 and 2001. The motion carried with nine (9) yeas.

89. The Town Council will conduct a public hearing to discuss a recommendation from the Zoning Ordinance Task Force regarding proposed Coastal Protection Zone Amendments to the Zoning Ordinance and take any appropriate action.

Anne Hayden, Chair of Zoning Task Force – explained that the proposed amendments were based on a watershed approach, which they felt was the only viable way to manage nutrient loadings to the bays. As a result of the analysis, an extension of the coastal protection zone was proposed to include what is currently called Farm and Field Two Zone (FF2). Development is currently controlled by minimum lot sizes. The Task Force proposed changing the mechanism from minimum lot size to a density base approach that is consistent with the rest of the town. They also proposed to calculate the density from a gross basis to a net basis. As a result of this recommendation, a four-acre lot is proposed instead of a five-acre lot. Ms. Hayden clarified that the minimum lot size can be as small as 20,000 sq. ft. as long as a 3.5-acre parcel is set aside, undeveloped. It was the intention of the committee to protect the bay from nitrogen runoff from septic systems, fertilizer and manure. Although the scientific studies were not conclusive, there was an overwhelming amount of evidence supporting the Task Force's recommendation.

Rita Worthing, Chair of Planning Board - stated that the Planning Board unanimously supported the proposed amendments (majority report of the Zoning Task Force) with two recommended changes. The first change suggested was to the Use Table, Section 209.1. The Board wanted the uses of campground, marina, marine activities, and mineral extraction be brought back to special permit status in the CP1 as it is in the current Coastal Protection Zone. It was thought that these uses should be reviewed, rather than

Town Council Minutes
May 15, 2000

Page 4

simply be allowed as permitted uses. With a predominantly residential coastline and no working waterfront in our town, the impact of these four particular uses would have a significant effect in the neighborhoods where they could be located and should require a reasonable review process. The second change was in Section 209.2 – the Dimensional and Density Table – under maximum impervious surface coverage. The Planning Board agreed with the Task Force’s calculations for impervious surface in CP1 but strongly disagreed with the statement that “marinas in the CP1 are exempt”, and wanted that provision stricken completely. Marinas in the CP1 have the potential to channel tremendous amounts of pollutants directly into the bays with their impervious surfaces. The Planning Board felt that this was not a viable compromise and that impervious surfaces should be strictly limited adjacent to the bays, and natural vegetative buffers should be required.

The public hearing opened at 8:00 p.m.

William Bryant of 18 Birch Meadow Road - urged the Town Council to adopt the recommendations of the Zoning Ordinance Task Force.

James MacLeod of 149 Jordan Avenue – wanted to safeguard the environment and was in favor of the proposed changes.

Adele Miller of 356 Highland Road – felt there was too much control of citizens’ lives and land. She asked the Council to abolish these recommendations.

Deborah Morton, representing a group of realtors – felt that the larger lot sizes are equivalent to the taking of property. Her group felt that the Coastal Protection 2 was not in the best interest of the Brunswick citizens and asked the Council to reject the Task Force’s report.

Judy Marsh operates and owns Paul's Marina - The marina was established in 1946, before there were any zoning regulations. She was concerned about marinas reverting to “special permit” status, with more restrictions, if the changes were approved.

Phyllis Austin of Mere Point. Road – supported the proposed amendments and asked the Council to consider future generations, and provide “farsightedness and leadership.”

Dave Boutin of Rossmore Road - asked that marinas not be singled out.

Andrew Goode of Blackstone Club Road – asked that the Council accept the Task Force report and include Paul’s Marina as a permitted use.

David Chaplin of Raymond Road – was very concerned about a town on the ocean that does not give special consideration to public access to the water. He also questioned the report that said that crushed rock was not impermeable.

James Ecker of Simpson Pt. Road, a professional engineer - Mr. Ecker supported the recommendations of the Task Force. He felt that the majority of concerns were based on fear rather than facts. This is the best-

fit solution balancing the compelling science and the unfortunate political realities. Safeguards need to be implemented soon.

Larry Hendrickson of 31 Meadowbrook Road - supported Paul's Marina as a conforming, permitted use.

Dan Levine of 785 Mere Point Road – wanted to see Paul's Marina as a conforming use and asked the Council to approve the Task Force's original recommendation.

Town Council Minutes
May 15, 2000
Page 5

Ruth Benedikt of 45 Harding Road - supported the ordinance. She felt that if this opportunity slips by, and the land is developed, its impossible to turn back the clock. All Brunswick residents have an economic stake in the value of the water, therefore, she urged the Council to adopt the proposed changes.

Bill VanTwisk of 24 Magean Street – asked the Council to support something similar to the Task Force “minority report.” He did not believe that the studies regarding nitrogen runoff were correct.

John Lemont of 21 Maple Street - supported Paul's Marina as a conforming use. He also stated that the worst part of pollution is coming from the head of the Bay.

Prentice Weiss of 895 Mere Point Road – supported Paul's Marina and questioned why the Planning Board reversed the Zoning Task Force's recommendation that a marina be a conforming use.

Rose Minott of 460 Highland Road – felt that the requirement to pump the septic tanks once every three years was unreasonable.

Mark Worthing of 26 Eastern Shore Road – stated that the current Coastal Protection Zone has national recognition. He supported the watershed approach. He agreed that marinas should remain a “special permit” as 98% of the shoreline is currently residential.

Bruce Clark of Highland Road – urged the Council to reject the proposed amendments and look at all the facts.

David Bean of Coombs Road - supported Paul's Marina as a conforming use. He was also concerned about lot sizes for his family.

Carol Liscovitz of 11 Berry Street (Planning Board member) – felt that the community should be grateful to have access to the professional expertise available, free of charge (referring to those serving on the Task Force and the Planning Board). She wanted to clarify that a “special permit” does not make Paul's Marina a nonconforming use. It simply needs more scrutiny for further development.

Jane Millett of 10 Franklin Street – was not convinced of the “science” that underlies the Task Force's recommendations. She urged the Council to support the minority report of the Task Force.

Carl Faddic of 66 Storer Road - commended the Task Force and the Planning Board and urged the Council to consider passing the proposed changes.

Matthew MacLeod of 149 Jordan Avenue – was in favor of the proposed Coastal Protection Zone.

Maria Padian of 16 Juniper Road – spoke in favor of the majority report of the Task Force.

Steven Weems of 44 Thompson Street – was a reluctant supporter of the proposed changes. He felt that the watershed approach is scientifically sound and it was best to err on the side of caution. He asked that the Council be open to amendments in the future. It was his opinion that there should be some provision for a potential industrial park in the CP2 Zone. He also thought that marinas should be a permitted use.

Colleen McKenna of 85 Old Pennellville Road – was very much in support of the zoning change and stated that we needed to do whatever was necessary to protect the health of the Bay.

Town Council Minutes
May 15, 2000
Page 6

Charlotte Agell of 39 Columbia Avenue – was in favor of the recommendation of the Task Force. She did not feel that the marina was an issue.

Robert Coffin of 13 Coffin Street – stated that those living on the water were concerned with water quality.

Liz Pierson of 656 Harpswell Road - thanked those who worked on the Zoning Task Force. She suggested that if more study is needed, she preferred to err on the side of caution. She urged passage of the proposed amendments to the Coastal Protection Zone.

John Coon of 102 Raymond Road – is an attorney who defends land/environmental issues. He was in favor of the proposed changes because he felt it was in the best interest of the Town.

Bill Smith of 19 Rocky Hill Road – is a member of the Planning Board and formerly co-chaired the Zoning Task Force. He felt he had learned much after two years of service on these committees. He asked the Council to consider the future and support the proposed changes.

Louis Marsteller of Freeport – was not confident of the “science” and felt that the proposed amendments needed adjustment. He encouraged the Council to make adjustments before closing on this.

Ben Ford of 324 Simpsons Point Road – believes in stewardship. Those who use Simpsons Point respect the Bay. He felt the marina should be a permitted use. He would like to see more objective analysis of opposing science and cautioned the Council to go slowly, as this is a political decision.

Jean Shaw of 15 Thompson Street - believed in protecting the bay. She hoped her children could look at the bay in the future and see it as she saw it twelve years ago.

Bill Morrell of 732 Mere Point Road – served on the Zoning Ordinance Task Force. He supported the vast majority of the work done but had difficulty with the assumption that septic leaching went 100% into the bay. Please see the attached material from the State Soil Scientist.

Alida Snow of 3 Atwood Lane – supported the recommendations of the Task Force.

Peter Brand of 318 Bunganuc Road – is technically trained, working in research and development, and questioned the scientific evidence supporting the proposed amendments.

Dave Gardner of 169 Mere Point Road - supported Paul's Marina as a permitted use.

Edward Hawes of 18 McLellan Street – reminded the Council that the vote of the Planning Board was unanimous. He felt that the process of special permits was helpful. It was necessary to take a careful watershed approach around Maquouit Bay.

Philip Morin of 174 Hillside Road – opposed the Farm and Field Two (FF2) Zone becoming a Coastal Protection Zone Two (CP2). He thought it was not necessary and was overbearing.

Donna Morin of 174 Hillside Road – stated that the proposed changes would impact her and her family negatively.

Jennifer Cost of 6 Aspen Drive – even though she does not live on the water, she does appreciate the value of the Bay.

Town Council Minutes
May 15, 2000
Page 7

Janet Brand of 318 Bunganuc Road – stated that this ordinance is not mandated by the State. Brunswick continues to implement restrictions over and above what the State mandates to protect its waters. She requested that Council exclude Highland Road, from Bunganuc Road to Pleasant Hill Road, from the proposed Coastal Protection Zone Two (CP2).

John Peters of 134 Middle Bay Road – felt the implications were enormous. He supported Paul's Marina as a permitted use in the Coastal Protection Zone.

Charlie Wiercinski of 12 Tarratine Drive - felt that the “special permit” was over used and that marinas should be permitted in the Coastal Protection Zone. He agreed with the watershed analysis but did not believe that four acres were necessary. He also suggested that the impervious level be restricted to 35% of the area rather than 5%.

Roland Morin of 174 Hillside Road – felt that more accurate testing needed to be done and suggested a third party. He agreed with Councilor Galloupe who stated, “Show me that the stuff is getting in the Bay and I will change my mind.”

Peter Lowe of 11 Thompson Street – urged the Council to support the ordinance.

John Fitzpatrick of 53 Shore Road - served on the Task Force. He supported the minority report of the Task Force. He felt more work needed to be done before this ordinance is imposed on the citizens. He also wanted marinas as a permitted use.

Ben Swan of 4 Page Street - strongly supported the recommendations of the Task Force.

Peter Didisheim of 39 Hemlock Road – stated that the threat to Maine's surface waters is very real and pervasive. It is one of the highest risks that this state faces. He felt that the watershed approach must be part of the environmental policy making.

Paul Clark of 9 Meagan Street – spoke of private property rights. In the interest of fairness, he hoped the Council would reject the ordinance.

David Dube' of 73 Minot Shore Road - commended Judy Marsh and her husband for being in the forefront of saving the Bay. He supported the marina being a permitted use and suggested that the work on the CP2 be delayed.

Jackie Sartorus of 14 Bowdoin Street – felt that the Task Force has already made compromises. Growth will happen in the Coastal Protection Zone, even with the proposed amendments.

Anne Hayden of 6 Bowker Street – stated that the Task Force spent a long time reviewing Dr. Clark’s material. She wanted to stress that the State Soil Scientist did not come to Brunswick on site, to make his evaluation. Requirements to pump septic tanks once every three years is the same that currently exist in the Aquifer Protection Zone. She commented about Councilor Galloupe’s remark that when he sees nitrogen in the bay then he will do something about it. Ms. Hayden responded that when we see the nitrogen in the bay, it will be too late to do anything about it.

The Public Hearing closed at 10:45 p.m.

Councilor Feldman agreed that he does not believe, nor do the members of the Task Force believe, that 100% of the nitrogen from septic systems leach into the bay. The Task Force also never assumed that every piece of land would be built and that we would ever reach full build out.

Town Council Minutes

May 15, 2000

Page 8

Chair McCausland hoped that if discussion was started tonight that it would be finished. If not, then he suggested that the Council wait until next Thursday.

Councilor Moll moved, Councilor Feldman seconded, to adopt the Coastal Protection Zone amendments to the Zoning Ordinance, as a whole, incorporating Coastal Protection One (CP1) and Coastal Protection Two (CP2) as advised and approved by the Planning Board, March 14, 2000.

The Council took a short recess.

Councilor Gleason felt that this ordinance has a tremendous impact on the people and private property rights.

Councilor Gleason moved, Councilor Galloupe seconded, to amend the ordinance by removing and deleting the creation of the Coastal Protection Zone Two (CP2).

Councilor Swanson stated that if Coastal Protection Zone 2 (CP2) were deleted, then a weaker Coastal Protection Zone 1 (CP1) would be left.

Councilor Feldman felt any property, which is in the watershed, would eventually run off into the bays. In fairness, this demanded that if restrictions were placed on those who lived within certain setbacks from the water, because their homes would eventually pollute the water, then restrictions needed to be uniform throughout the watershed. This is the reason for the creation of the Coastal Protection Zone Two (CP2). In order to ease restrictions for those in Coastal Protection Zone One (CP1), who bore the entire burden of the environmental work for the last nine years, the Task Force created the Coastal Protection Zone Two (CP2). He felt that if Coastal Protection Zone Two was eliminated from this proposal that the Town would end up with a weaker environmental zone than when they started.

Councilor Moll stated that the removal of Coastal Protection Zone Two (CP2) was a dangerous motion, unless the Council was willing to vote the whole Task Force proposal down. If this was the case, she suggested that the Council not approve the ordinance and leave everything as it is presently.

Councilor Galloupe felt that the low oxygen count in the mud on Maquoit Bay is due to erosion. If nitrates were flowing from subsurface wastewater systems into the bay, then he questioned why the wells on the properties were not testing with nitrates. There is a natural level of nitrates that exist in the bays. Without nitrogen, vegetation will not grow. He supported setbacks from the streams. He wanted to clarify a previously quoted comment that he had not seen anything that proves nitrates from septic systems were getting into the bay.

Councilor Lowe stated that this is a difficult issue, both scientifically and politically. He believed that the preponderance of the science supports the basis for the recommendations. When there is substantial information, even if imperfect, then we must err on the side of protecting the bay. The small lot owner is well protected with the grandfathering clause. He asked the Council to consider the materiality of this ordinance. ~~He would rather see less homes in this area with onsite sewer systems instead of public sewer lines brought into this area.~~ He pointed out that in the last decade, only 15 homes have been built in the Farm and Forest Two (FF2) zone. This ordinance was appropriate for Brunswick to take unilateral action. (*As amended and approved by the Town Council June 5, 2000.)

Councilor Swanson remembered that great effort had been made to place diverse individuals, on the Zoning Ordinance Task Force. She asked the Council to think about the ethical consequences of not listening to the Committees they had appointed and consider the long-term chance of stewardship for the Town of Brunswick.

Town Council Minutes
May 15, 2000
Page 9

Councilor Feldman said everyone who spoke with scientists, or those with scientific backgrounds, stated that the watershed approach was the way to go. He felt the burden was on the Councilors who are against this ordinance, to show why this ordinance should not be approved. Councilor Feldman currently serves on the New Meadows River Watershed Steering Committee. If Council was going to throw out the science presented tonight, he asked what basis would be used to work on the New Meadows River. Why should he continue to be involved in that study if Council will not pay attention to the studies?

Councilor Gleason understood that there were three areas that this ordinance was based on, the flushing rate, the nitrate loading, and the build out analysis. If one area is disproved, it was his opinion that the other two areas lost their impact. He questioned that if wells within 50' of septic systems are not being polluted, then how are nitrates getting into the bay. He also pointed out that only 15 homes have been built within the last ten years. This is far from the threat of 100% build out. Two reasonable people can look at the same information and disagree with the end results. He believes that is what has happened. He will be voting for this amendment.

Councilor Moll supported the concept of the two-zone structure. She felt a well can be quickly polluted.

The amendment to delete the Coastal Protection Zone Two (CP2) from the proposed ordinance was voted on and carried with five (5) yeas and four (4) nays – Councilors Feldman, Swanson, Moll, and Lowe opposed.

Councilor Wilson stated that he has worked for Paul's Marina in the past, and has a boat stored at the marina. He did not feel it was a conflict of interest, but wanted to make this disclaimer.

Councilor Galloupe moved, Councilor Wilson seconded, to accept the Task Force's recommendation that marinas and marine activities be a permitted use in Coastal Protection Zone One (CP1) and further move to exempt marinas from the impervious surface restrictions in Coastal Protection One (CP1).

Councilor Swanson stated that 80% of Paul's Marina is covered with impervious surface. She suggested keeping the special permit approval. This could potentially stop a second marina from going into this area. This is the difference between state and local control.

Councilor Wilson did not agree that gravel is 98.6% impermeable.

Councilor Feldman thought it would be irresponsible to vote for this.

Councilor Lowe proposed an amendment to Councilor Galloupe's motion to reinstate the CP2 with a three-acre density lot size.

Chair McCausland stated that this is a proposed amendment to the motion, which was not applicable to marinas and marine activities.

The amendment to the motion to accept the Task Force's recommendation that marinas and marine activities be a permitted use in Coastal Protection One (CP1) and further move to exempt marinas from the impervious surface restrictions in Coastal Protection One (CP1) was voted on and carried with five (5) yeas and four (4) nays – Councilors Feldman, Swanson, Moll, and Lowe opposed.

Councilor Galloupe suggested that the Council, at another time, address the issue of pumping the septic tanks once every three years. To the best of his knowledge, this has never been enforced.

Town Council Minutes
May 15, 2000
Page 10

Councilor Swanson stated that there have been no objections to the current Coastal Protection Zone, which is working. She felt that this ordinance, as amended, would leave a weaker Coastal Protection Zone One.

Councilor Gleason thought that those who supported the package of CP2 and CP1 would rather not support the ordinance, as amended, and go back to the existing Coastal Protection Zone. He suggested review of the differences between the existing ordinance and the proposed ordinance, as amended.

Councilor Gleason moved, Councilor Wilson seconded, to table this item until Thursday, May 25, 2000. The motion carried with seven (7) yeas and two (2) nays – Councilors Moll and Lowe opposed.

The meeting adjourned at 12:18 a.m.

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

Deborah S. Cabana
Town Clerk
May 18, 2000

May 25, 2000

Date of Approval

Council Chair