

**Town of Kennebunkport
Board of Selectmen's Meeting
Village Fire Station-32 North Street
July 23, 2015 – 6:00 PM**

Minutes of the Selectmen Meeting of July 23, 2015

Selectmen present: Stuart E. Barwise, Patrick A. Briggs, Edward W. Hutchins, and Sheila Matthews-Bull

Selectmen absent: Allen A. Daggett

Others present: Barbara Barwise, Doug Butler, Jean Butler, Susan Boak, Michael Claus, David Powell, Werner Gilliam, David James, James McMann, Arlene McMurray, Laurie Smith, and Amy Tchao

1. Call to Order.

Chair Matthews-Bull called the meeting to order at 6:15 PM.

2. Executive session per 1 M.R.S.A. § 405 (6) (E) to discuss Goose Rocks Beach litigation.

Motion by Selectman Barwise, seconded by Selectman Hutchins, to go into executive session per 1 M.R.S.A. § 405 (6) (E) to discuss Goose Rocks Beach litigation. **Vote:** 4-0.

The Board came out of executive session at 7:04 PM. No action was taken.

3. Approve the July 9, 2015, selectmen meeting minutes.

Motion by Selectman Barwise, seconded by Selectman Briggs, to approve the July 9, 2015, selectmen meeting minutes. **Vote:** 3-0-1/Selectman Hutchins abstained because he was not present at that meeting.

Item 6 was addressed next.

6. Consider the following ordinance amendments for November 2015 Special Town Meeting.

a. Amendments to the Animal Control Ordinance

Town Attorney Amy Tchao went over some of the revisions to the Animal Control Ordinance that she incorporated after hearing suggestions from the Goose Rocks Beach Advisory Committee and Town Manager. Her changes: address endangered species; define nesting area; relabled limited dog access area; relaxed rules outside of nesting season; and in the Dog Rules defined the West End Plover Protection Area (WEPPA). See Exhibit A for all of the changes.

Town Manager Laurie Smith requested that she make the dates in chronological order.

Susan Boak asked if the Colony Beach Hotel saw the proposed ordinance since it is a dog friendly hotel. Ms. Smith responded that they did see the proposed ordinance.

Ms. Smith said she also received comments from the US Department of Fish and Wildlife which the Board received in its packet. She asked if the Board was interested in inviting them to a meeting. The Board was not interested.

4. Public Forum (This is an opportunity for anyone who wants to address the Board of Selectmen with any issue that is not on the agenda.).

David James asked if something significant is going to change on the Animal Control Ordinance. Ms. Smith responded there are no dramatic changes at this point.

David James mentioned that he has heard complaints from people watching the televised meeting who say they can't hear what the Board members are saying. He asked that everyone talk into their microphones.

Mr. James also suggested that perhaps it is time for Kennebunk and Kennebunkport to get together and develop a Comprehensive Plan to address Dock Square and Kennebunk Lower Village.

5. Commitment of the 2015 property taxes and establishment of a tax rate.

Town Manager Laurie Smith explained that the Board has a choice of selecting \$7.70 for the mill rate with a \$63K overlay or \$7.68 mill rate with a 25K overlay. Ms. Smith recommended the \$7.70 mill rate with the \$63K overlay. She thinks the \$25K overlay is too narrow.

Chair Matthews-Bull was concerned that the school renovations may increase costs.

Selectman Hutchins said the bonds for the school renovations will be a flat rate, i.e. the same every month.

Selectman Briggs mentioned that they have Representative Chris Babbage of Kennebunk to thank for that bond payment structure. He said Mr. Babbage championed for the passage of LD1222 which authorizes a regional school unit to issue bonds that may be repaid using a level debt payment structure. This means that the annual principal and interest rates remain the same throughout the life of the issue of the bonds. He supports having the \$7.70 for the mill rate with a \$63K overlay. He said they need an appropriate cushion, and he

thinks the impact will be as minimal as possible.

Selectman Barwise said the \$7.70 mill rate with the \$63K overlay is a buffer.

Motion by Selectman Briggs, seconded by Selectman Hutchins, to accept the mill rate of \$7.70 with an overlay of \$63K for fiscal year 2016. **Vote:** 4-0.

6. Consider the following ordinance amendments for November 2015 Special Town Meeting.

b. Amendments to the Land Use Ordinance regarding roomers.

Mr. Gilliam said comments and concerns were sent to the Growth Planning Committee for review.

Chair Matthews-Bull said she is not in favor of renting on a transient basis, she prefers three-month rentals to provide housing for the summer workers. She said they need to be careful about opening the door to other problems. Selectman Barwise agreed.

Mr. Gilliam said they will need to use caution in regulating this ordinance.

Jim McMann asked for clarification of roomers. He is curious how it will be enforced since there is a huge gray area.

Selectman Hutchins added there is a real need for affordable housing in Kennebunkport.

Barbara Barwise said Goose Rocks Beach has a large amount of rentals and they need to exercise caution when they regulate this.

Selectman Matthews-Bull commented that many cities and towns are taking on this issue, even Paris and Berlin.

David James said he received a request to ask for at least 30-day rentals and not weekend rentals.

Doug Butler was concerned about transient housing and enforcement of regulations. He would like the Land Use Ordinance to define enforcement.

Susan Boak passed out a Powerpoint presentation to the Board that essentially said:

- By amending the LUO allowing roomers and changing it from a conditional use to a permitted use, abutters will not need to be notified, and the abutters would not be able to provide their input.
- The proposed amendment to the LUO adds three zones: Village Resi-

dential, Village Residential East, and Cape Arundel.

- Removing the date restriction of March 6, 1972, includes new developments which have deeded covenants. Is the Town going to invalidate existing deeds?

Ms. Boak recommends keeping it an open, public process where abutters are notified and existing deed restrictions are honored.

7. Update on recycling options.

Public Works Director Michael Claus announced that the Kennebunk Recycling Center on Sea Road has a new vendor, CPRC Group. With this new vendor, Kennebunk has to pay a fee for collection and processing at the station, which they will pass on to nonresidents of Kennebunk. As a result, beginning August 1, the fee for nonresidents who bring recycling to the Kennebunk Recycling Center will be \$2.00 a bag.

Mr. Claus said other options are:

1. Change recycling pick up from every other week to every week which could increase costs by approximately \$40,000 to \$50,000.
2. Pay the Kennebunk transfer station for Kennebunkport residents who bring their recycling there, but there is not enough data to determine the usage.
3. Place a dumpster at the Public Works Department on Beachwood Avenue and have Oceanside haul it away which could cost approximately \$4,000, but this would require monitoring.
4. Give residents additional recycling bins and encourage them to use the Town's recycling pick up. The cost \$6.00

Ms. Smith said there is not enough data, so she does not know how many Kennebunkport residents use the Kennebunk Recycling Center. CPRC started tracking data, and from July 7 to July 16 they had 52 Kennebunkport residents bringing recycling and grass clippings to the station. She said the budget has already been set for this fiscal year.

Mr. Claus said the Town has recycling pick up every other week for residents. He said if people go to Home Depot and purchase a container, Oceanside will pick up what people put out, as long as it is clearly marked recycling. It must weigh under 40 pounds.

David James said he has been up at the Kennebunk Recycling Center twice since July 1 and they never asked him where he was from. He has more recy-

cling than can be collected on a two-week basis. He volunteered to survey members of the KRA, which has about 200 people/approximately 120 families. He could ask members if they use the Kennebunk recycling center. Also, he said if you put dumpsters around town, you can't control what goes in it.

Jim McMann also said he has never been asked where he was from when he brought his recycling to the Kennebunk recycling center.

Barb Barwise said they did check when she went to the recycling center.

Selectman Briggs said they have a system in town that works, picking up recycling every other week. He suggested that everyone get a third or fourth recycling bin and to use that as a starting point. If that does not work, than they can consider recycling pick up every week.

Motion by Selectman Briggs, seconded by Selectman Barwise, that the Town advise homeowners in Kennebunkport to purchase another bin for recycling and to use the Town's current recycling pick up of every other week. **Vote:** 4-0.

8. Request to waive tent permit fee for Kennebunkport Consolidated PTA Circus Smirkus event.

Motion by Selectman Hutchins, seconded by Selectman Barwise, to approve the waiver for the tent permit fee for the Kennebunkport Consolidated PTA Circus Smirkus event. **Vote:** 4-0.

9. Other business.

a. MMA Annual Election for Vice-President and Executive Committee Members.

Ms. Smith said she was nominated for the position of Vice-President of MMA in 2016. She was the only person nominated. This means she would serve as President in 2017. Three people were also nominated for Directors. The Board supports these nominations.

b. Dock Square Parking Lot Update.

Ms. Smith provided the Board with a spreadsheet of statistics from June 3 to July 16. The parking lot had approximately 14,000 transactions with 51 failed credit card transactions. Sixty people who could not use their credit card were billed and all paid their bills. She thinks having staff at the lot from noon to 5 PM helped with the many people who had difficulty with their credit card. She thanked the staff working at the lot and Police Chief Craig Sanford for their assistance during this transition.

Ms. Smith said Public Works Director Michael Claus was working with the

Town Attorney on a settlement agreement for replacement of a well on 25 Old Cape Road due to contamination.

Motion by Selectman Barwise, seconded by Selectman Hutchins to authorize the Town Manager to sign the Settlement Agreement For Private Water Supply located at 25 Old Cape Road. **Vote:** 4-0.

Selectman Briggs mentioned a special amusement permit that was in his packet. It was on the first agenda, but accidentally deleted from the amended agenda.

Motion by Selectman Barwise seconded by Selectman Briggs, to approve the a renewal special amusement permit application submitted by US Hotels New England LLC, DBA The Breakwater Inn, 133 Ocean Avenue. **Vote:** 4-0

10. Approve the July 23, 2015, Treasurer's Warrant.

Motion by Selectman Barwise, seconded by Selectman Hutchins, to approve the June 23, 2015, Treasurer's Warrant. **Vote:** 4-0.

11. Adjournment.

Motion by Selectman Barwise, seconded by Selectman Hutchins, to adjourn. **Vote:** 4-0.

The meeting adjourned at 8:30 PM.

Submitted by

Arlene McMurray
Administrative Assistant

The Kennebunkport Dog Ordinance adopted at a Special Town Meeting on June 9, 1976 is hereby repealed and replaced with this Animal Control Ordinance

ANIMAL CONTROL ORDINANCE

Section A: Purpose

The purpose of this ordinance is to require that all animals in the Town of Kennebunkport be kept under the control of their owner or keeper at all times so that they will not injure persons or other animals, damage property or create a public safety threat.

The provisions of this ordinance that apply to the owner of an animal apply equally to any person keeping, or having control, custody or possession of that animal.

Section B: Definitions

1. ANIMAL: Every living, sentient creature not a human being.
2. ANIMAL CONTROL: Control of dogs, cats and domesticated or undomesticated animals.
3. ANIMAL CONTROL OFFICER: Any person appointed by the Town of Kennebunkport to enforce animal control laws.
4. ANIMAL SHELTER: A facility that includes a physical structure that provides temporary shelter to stray, abandoned, abused or owner-surrendered animals.
5. AT LARGE: Off the premises of the owner, unleashed and not under the Voice and Sight control of a responsible party.
6. BEACH: The beaches within the Town of Kennebunkport commonly referred to as Goose Rocks Beach, Colony Beach, and Cleaves Cove.
7. DOG: Any of large and varied groups of domesticated animals in the canine family.
8. LEASH: Hand held device, 15 feet or less in length, which can be used to restrain a dog.
9. LIMITED DOG ACCESS AREA: Any beach area on Goose Rocks Beach, Colony Beach or Cleaves Cove, that is designated by the Board of Selectmen for special protection of piping plovers or other endangered species based upon scientific and historical data, where dogs may be either prohibited entirely or permitted only if on-leash based on time of day and/or date, as provided herein or pursuant to rules adopted hereunder.
10. NESTING AREA: Any beach area on Goose Rocks Beach, Colony Beach or Cleaves Cove, that has been roped off, fenced off or otherwise demarcated or posted by governmental officials or their agents to protect the nesting site of a piping plover or of any other endangered species protected under federal or state law.

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11. OWNER: Owner or any person or persons, firm, association or corporation owning, keeping or harboring an animal or any person having custody, possession, or control of an animal.

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12. RESPONSIBLE PARTY: Any person who has custody, possession or control of a dog, whether or not that person is the Owner.

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Any beach area on Goose Rocks
Beach, Colony Beach or Cleaves
Cove, that has been roped off,
fenced off or otherwise demarcated
or posted by governmental officials
or their agents to protect the
nesting site of a piping plover or of
any other endangered species
protected under federal or state
law.¶

13. VOICE AND SIGHT CONTROL: "Voice Control" means that the dog returns immediately to and remains by the side of the responsible party in response to the responsible party's verbal command. "Sight Control" means that dog is always within sight of the responsible party and the dog is capable of complying with Voice Control. If a dog approaches or remains within 10 feet of any person other than the responsible party, that dog is not under voice control and is in violation of this Ordinance unless such person has communicated to the responsible party by spoken word or gesture that such person consents to the presence of the dog. A dog barking repeatedly is not considered under Voice and Sight Control.

Section C: Requirements for Control of Animals

1. AT LARGE DOGS: It is unlawful for any dog, licensed or unlicensed, to be at large within the Town of Kennebunkport, except when used for hunting. Dogs shall be considered at large unless leashed or under Voice and Sight Control of a responsible party. A responsible party shall maintain control of their dog(s) at all times, not allow the dog(s) to charge, chase or display aggression towards any person, or disturb or harass any person, other dogs or wildlife. A responsible party shall have a leash in his/her possession for any dog that is off leash. The owner of any dog found at large or otherwise in violation of this section will be subject to the civil penalties provided in the Ordinance and/or Maine State Law, Title 7, Section 3911.
2. DOGS LEASHED: A leash shall be used to restrain a dog: (a) if the dog fails to respond to voice commands when off the premises of the owner, (b) when a dog is walking with a responsible party on roads and sidewalks in the Town of Kennebunkport, or (c) if the responsible party is ordered by the Animal Control Officer or a law enforcement officer to leash the dog. The owner of any dog found in violation of this section will be subject to the civil penalties provided in the Ordinance.
3. IMPOUNDMENT OR RETURN OF AT LARGE DOGS: All dogs found at large in violation of this Ordinance or Title 7, M.R.S.A., Section 3911 may be impounded at the animal shelter

or returned to the owner, at the discretion of the Animal Control Officer or law enforcement officer.

4. **LICENSES:** No dog shall be kept within the limits of the Town of Kennebunkport unless such dog is licensed by the owner in accordance with Maine State Law.
5. **RABIES TAGS:** Rabies tags obtained from a veterinarian for immunization against rabies must be securely attached to the dog's collar and must be worn by the dog for which the tag was issued except when the dog is hunting, in training or in an exhibition or on the premises of the owner.
6. **CONTROL OF ANIMAL WASTE:** An owner or responsible party must remove and dispose of any feces left by his/her animal on any sidewalk, street, beach, public property or private property (other than the property of the owner of the animal or of a person who has consented to the presence of the animal on his or her property). Deposit of feces left off property of the owner shall be placed in an appropriate litter receptacle.

Section D: Requirements for Dogs on Beaches

1. **AUTHORITY:** The Board of Selectmen shall have the authority to adopt specific rules governing dogs on Goose Rocks Beach, Colony Beach and Cleaves Cove that are more restrictive than the provisions of Section C of this Ordinance and are consistent with the provisions of Section D.2 of this Ordinance. For example, the Board of Selectmen or designee may designate Limited Dog Access Areas on these beaches for special protection for piping plovers or other endangered species based upon scientific and historical data consistent with state and federal laws governing endangered species. For specific rules governing dogs on Goose Rocks Beach, the Board of Selectmen shall have the authority to adopt such rules after consultation with the Goose Rocks Beach Advisory Committee, in accordance with Section IV.D of the Beach Use Ordinance for Goose Rocks Beach.
2. **DOG RESTRICTIONS ON BEACHES:** The following restrictions apply to dogs on the following beaches located within the Town of Kennebunkport: Goose Rocks Beach, Colony Beach and Cleaves Cove.
 - a. An owner or responsible party shall always be required to leash their dog on any of the applicable beaches referenced above when directed to do so by a law enforcement officer or Animal Control officer.
 - b. Pet waste must be picked up immediately and disposed of properly in an appropriate litter receptacle.
 - c. From April 1 to September 30, dog access shall be limited in the Limited Dog Access Areas of each beach as set forth in rules adopted pursuant to this Ordinance.

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- d. From April 1 to September 30, no dog shall approach within 200 feet of any Nesting Area.
- e. From April 1 to September 30, if under Voice and Sight Control, dogs may be off leash on the beach between 6:00 am and 7:30 am, except to the extent the restrictions in Sections D(2)(c) and/or (d) above may require otherwise.
- f. From April 1 to June 14th, dogs must be on leash on the beach at all times other than between 6:00 am and 7:30 am, when they may be off leash if under Voice and Sight Control, except to the extent the restrictions in Sections D(2)(c) and/or (d) above may require otherwise.
- g. From June 15 to September 30, dogs are not permitted on the beach between 8:30 am and 6:00 pm. This provision does not apply to use of a service dog by a person with a disability when the dog is required to perform work or tasks directly related to the person's disability. Between 6:00 pm and 6:00 am and between 7:30 am and 8:30 am, dogs are permitted on the beach if on leash, except to the extent the restriction in Section D(2)(d) above may require otherwise. Between 6:00 am and 7:30 am, dogs may be off leash, if under Voice and Sight Control, in accordance with Section D(2)(e) above.
- h. From October 1 through March 31, if under Voice and Sight Control, dogs may be off leash on the beach, except between 12:00 pm and 2:00 pm when they must remain on leash.

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Section E: Rulemaking Authority governing Other Public Resources

Notwithstanding the general rules found in Section C herein, the Board of Selectmen shall have the authority to adopt specific rules governing dogs on other publicly owned or operated lands located within the Town of Kennebunkport, such as public parks.

Section F: Penalties

- Any person who violates any provision of this Ordinance shall be subject to civil penalties for each violation, as follows:

First violation: not less than \$50.00 and not more than \$100.00, plus costs and reasonable attorneys' fees.

Second violation: not less than \$100.00 and not more than \$250.00, plus costs and reasonable attorneys' fees.

Third and subsequent violations: not less than \$250.00 and not more than \$500.00, plus costs and reasonable attorneys' fees.

2. Notwithstanding multiple violations of this Ordinance, any person who violates Section C(4) (Licenses), or Section C(5) (Rabies Tags) of this Ordinance shall be subject to a civil penalty of not more than \$100.00 for each offense, consistent with 7 M.R.S.A. §§3918, 3924.
3. All civil penalties collected pursuant to this Ordinance shall be recovered to the use of the Town of Kennebunkport and deposited in the separate account required by 7 M.R.S.A. Section 3945.
4. A person issued a civil violation citation for violating this Ordinance may elect to pay the minimum penalty specified above for each violation alleged in the citation, in lieu of appearing in court to answer the citation. Such payment must be received at the Office of the Town Clerk in the amount specified by the Animal Control Officer by the seventh day prior to the court appearance date specified in the citation. Upon receipt of such payment by the Clerk, the Animal Control Officer or law enforcement officer shall cause the citation to be dismissed. However, the violations alleged in the citation shall be deemed admitted for purposes of assessing any future penalties under this section.
5. Any civil penalty collected for a violation of this Ordinance shall not preclude the Town from imposing or collecting a fine or penalty for a violation of the Barking Dog Ordinance (adopted March 10, 1984).

Section G: Severability Clause

If any part of this Ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this ordinance.

DOG RULES ON GOOSE ROCKS BEACH
(Adopted on _____, 2015 by Kennebunkport Board of Selectmen
after Consultation with Goose Rocks Beach Advisory Committee)

Section A: Purpose

These rules are adopted pursuant to Section D.1 of the Animal Control Ordinance, Section IV.D of the Beach Use Ordinance for Goose Rocks Beach and 30-A M.R.S. § 3001. The purpose of these rules is to provide clear expectations pertaining to dogs on Goose Rocks Beach, consistent with the ordinance requirements in the Animal Control Ordinance (amended _____, 2015), in order to protect against harm to endangered species and/or to the public health, safety or welfare.

Section B: Limited Dog Access Areas

The following are designated Limited Dog Access Areas on Goose Rocks Beach:

1. West End Plover Protection Area ("WEPPA"): The West End Plover Protection Area is a Limited Dog Access Area on Goose Rocks Beach that begins at Norwood Avenue and continues westerly to the Batson River.

Section C: Nesting Areas

Specific rules pertaining to Nesting Areas on Goose Rocks Beach are as follows:

1. From April 1 to September 30, no dog shall approach or remain within 200 feet of any clearly marked Nesting Area.
2. The 200-foot buffer area around a designated Nesting Area is limited to beach areas and, specifically excludes back dune areas, lawns or upland properties within 200 feet of these Nesting Areas.
3. From April 1 to September 30, dog owners who live within 200 feet of a Nesting Area or who take their dog within 200 feet of a Nesting Area at times when these rules allow dogs on the beach must leash their dog and attempt to access the beach as far away as possible from the Nesting Area.

Section C: Rules

The following rules apply to dogs on Goose Rocks Beach:

1. From April 1 to September 30, dogs may not be off leash within WEPPA at any time.
2. From June 15 to September 30, dogs are not permitted on the beach (including within WEPPA) between 8:30 am and 6:00 pm.
3. All other provisions and restrictions in Section D.2 of the Animal Control Ordinance shall apply and are unaffected by these rules.

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For purposes of these rules, a Protected Area is defined as any beach area on Goose Rocks Beach that has been roped off, fenced off or otherwise demarcated or posted by governmental officials or their agents to protect the nesting site of a piping plover or of any other endangered species protected under federal or state law.¶

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West End Plover Protection Area ("WEPPA"): The West End Plover Protection Area is a Restricted Area on Goose Rocks Beach that begins at Norwood Avenue and continues westerly to the Batson River. Restriction – Dogs allowed on leash only during times when dogs are otherwise allowed on the beach by Ordinance.¶
Notwithstanding Section D.2.e of the Animal Control Ordinance which permits dogs to be off-leash on the beach in certain circumstances, dogs may not be off leash within WEPPA at any time ... [1]

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are designated Restricted Areas on Goose Rocks Beach and the rules and restrictions applying thereto:

West End Plover Protection Area ("WEPPA"): The West End Plover Protection Area is a Restricted Area on Goose Rocks Beach that begins at Norwood Avenue and continues westerly to the Batson River. **Restriction – Dogs allowed on leash only during times when dogs are otherwise allowed on the beach by Ordinance.**

Notwithstanding Section D.2.e of the Animal Control Ordinance which permits dogs to be off-leash on the beach in certain circumstances, dogs may not be off leash within WEPPA at any time from April 1 to September 30.

All other restrictions in Section D.2 of the Animal Control Ordinance apply and are unaffected by these rules.