

Private audience: Brown, 4 councilors attend closed-door meeting with rail depot foes

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BRUNSWICK — Town Manager Gary Brown and four town councilors took part in a private, unannounced meeting Monday night with board members of a neighborhood group concerned about plans to build a train layover facility between Stanwood Street and Church Road.

Councilors Joanne King, Benet Pols, Debbie Atwood and John Perreault attended the meeting, which took place at Resource Systems Engineering, Inc., 30 Parker's Way. The town did not post notice of the meeting on its website or via other means typically used to provide public notice about municipal meetings.

Brown said Monday's meeting with the Brunswick West Neighborhood Coalition "was not a public meeting," and, as such, did not require public notice. Brown cited a 2009 email from the town's attorney, Pat Scully of Bernstein Shur, in which Scully opines that public notice is required only in cases when a quorum of the town's nine-person council is present, meaning five or more councilors.

Preti Flaherty attorney Sigmund Schutz, who co-wrote "Maine's 'Right to Know' Law: An Introduction and Guide" and who represents The Times Record, disagreed.

"That is a meeting that violates (Maine's Freedom of Access Act)," Schutz said Tuesday. "There is nothing in the statute that requires a quorum" to trigger the mandate that the public be notified, he said.

While acknowledging that ambiguity exists about how some public officials define the word "meeting," Schutz said he interprets Maine law to require public notice for scheduled meetings to which three or more town councilors are invited and attend.

"An assembly of four town councilors, even though not a quorum, qualifies as a meeting," Schutz wrote in a follow-up email to The Times Record. "Another way to look at this is that there was an ad hoc subcommittee and ALL the members of that ad hoc subcommittee were present."

To support his interpretation of the law, Schutz referred to Maine Revised Statute Annotated Title 1, Subsection 406, which states: "Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local

representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.”

When reached by phone Tuesday, Perreault, Pols and King all said they did not have concerns about attending the meeting without public notice and that councilors were asked not to speak at the meeting.

Anna Nelson, a spokeswoman for the neighborhood group, wrote in an email Tuesday to The Times Record that Brown was invited to the meeting to speak but that the board “asked that the councilors just listen.”

Those at the meeting confirmed that Atwood was also in attendance. Atwood did not return a call for comment Tuesday.

#### The meeting

Because the meeting was private, Brown said, he declined to comment on what took place or confirm the nature of his comments as detailed by members of the neighborhood group.

Brown spoke briefly at Monday’s meeting, according to Patrick Rael, a spokesman for the Brunswick West Neighborhood Coalition, which stated in a press release Monday that it “supports Downeaster service to Brunswick, but is proactively engaged in protecting its neighborhood from the certain negative impacts” of the proposed 60,000-square-foot facility where trains would park for nightly repairs.

Nelson wrote in her email that Brown reiterated the Northern New England Passenger Rail Authority’s (NNEPRA) selection of the site between Stanwood Street and Church Road — called “Brunswick West” — and urged the group to stop fighting the location of the facility “to concentrate on mitigation.”

According to Nelson, Brown indicated that “the town was willing to help with the mitigation piece.”

Rael said Tuesday that Brown initially asked him for a private meeting, which prompted the invitation to meet with the group.

“We did this because (Brown) is the one who asked to speak with us,” Nelson wrote, “and we wanted to know why he decided to engage us after seven months of us reaching out to the town and begging for help with no results.”

Rael said that town officials left after Brown’s comments.

Nelson wrote that, at the time of the meeting Monday night, the group had not done enough research “to be able to have a completely open discussion” with town councilors and that most of

the group's board "thought that an open discussion should take place in the proper format — possibly a public meeting/workshop."

The lack of an open discussion at the meeting left some councilors "obviously disappointed," Nelson wrote.

"The meeting was their meeting," King said Tuesday. "The town councilors weren't allowed to talk."

King said she attended the meeting of the neighborhood group "to show good faith in wanting to work with" the neighborhood group.

"If I hadn't gone, or if no councilors had gone, I don't know what message that would have sent," King said.

On Monday, the neighborhood group announced that councilors King and Perreault will be members of a NNEPRA advisory board, alongside neighborhood residents Nelson, Dan Sullivan, and Bob McEvoy.

Earlier this month, Patricia Quinn, executive director of NNEPRA, told The Times Record that "there has been so much misinformation" about the layover facility project and that NNEPRA wants "to have the advisory group meet and have the facts on the table."

That group's first meeting will be held Friday at 10 a.m. in NNEPRA's Portland office at 75 W. Commercial St., Suite 104.

### Mitigation

In a Nov. 3 letter to Brown, Quinn indicated a budget gap for the layover facility project could hamper efforts to mitigate noise and pollution to neighboring homes.

"The very preliminary construction estimates provided by (consulting firm Parsons Brinkerhoff) indicate that a facility which maximizes mitigation will exceed the anticipated project budget," Quinn wrote.

Quinn said that shortfall could cause NNEPRA to revert to previous plans for a 40,000-square-foot facility. If three trains were parked overnight, the smaller facility could leave one train idling outside, Quinn told The Times Record in a phone interview Nov. 9.

According to a report compiled in August by Charlie Wallace — founder of the environmental engineering firm where the Monday meeting took place — a noise study of a train idling on nearby tracks exceeded World Health Organization criteria for sleep disturbance.

In Quinn's Nov. 3 letter, she wrote that results from air quality, noise, vibration, and soil analyses at the site "indicate that the noise and vibration impacts which will result from layover operations, can be mitigated through the facility design."

A design for the facility has not yet been drafted.

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