FALMOUTH PLANNING BOARD MINUTES
TUESDAY, MARCH 3, 2015
6:30 PM

Members Present: Jay Chace (Chair), Bill Benzing (Co-Chair), Tom McKeon, Chris Hickey; Rudy Israel

Staff Present: Ethan Croce-Senior Planner; Lisa Sangillo-Recording Secretary

Meeting was called to order at 6:31pm.

Item 1 Approval of minutes from the January 2015 and February 2015 Planning Board meetings.

Mr. McKeon moved to accept the January 6, 2015 minutes. Mr. Israel seconded the motion. Motion passed 5-0.

Mr. McKeon moved to accept the February 3, 2015 minutes. Mr. Israel seconded the motion. Motion passed 4-0. Mr. Benzing abstained as he was not present at the February 2015 meeting.

ADMINISTRATIVE ACTION ITEMS:

Mr. Chace asked if anyone from the Public would like either item removed from the Administrative Action items. There were no comments or objections from the Public.
Mr. Hickey motioned to take up Item 2 for discussion and remove it from Administrative Action. Mr. McKeon seconded. Motion passed 5-0. Mr. Hickey requested the Board discussed this item immediately as he just had a clarifying question.

Item 2 **Aroldo Ribiero**. – 240 Gray Road - Request for a Private Way Amendment to add an additional lot to Bella's Way. Tax Sheet 200; Map-lot R06-032-A. Zoned VMU and Route 100 CO.

Mr. Titcomb from Titcomb Associates representing Mr. Ribiero gave a brief overview of the application. Mr. Hickey questioned the road behind the project and why it wasn't proposed to connect to the neighboring condominium complex as the roads are only approximately 20 feet apart. Mr. Titcomb answered that both roads are private and also stated the condo project was not a dedicated road so street connectivity would not be an issue. Mr. Croce stated that private ways do not have an ordinance requirement for street connectivity.

Mr. McKeon moved to approve the request. Mr. Benzing seconded. Motion passed 5-0.

Item 3 **Unitil Service Corp.** – Gray Road and Blackstrap Road – Request for Shoreland Zone Permit Amendment to relocate a gas pipeline. Tax Sheets 110 and 190; Map-lots R06-065-001 and R06-092. Zoned Farm & Forest, RCZO, LR and RP (Shoreland).

Mr. Benzing motioned for approval of Unitil Service Corporation's application. Mr. McKeon seconded. Motion passed 5-0.

PUBLIC HEARINGS:

Item 4 An amendment to Section 3.18.11 of the Zoning and Site Plan Review Ordinance to extend the expiration date of the Tidewater Master Planned Development District (Map) by 6 months, to October 4, 2015.

The Tidewater Master Planned Development District and Tidewater Master Plan were created in April 2005. Section 3.18.11 of the Ordinance includes a provision whereby the rights to develop under the Master Plan expire after 10 years for those portions of the District that are not "substantially completed".

Mr. Chace outlined to the audience the procedures for the Public Hearing.

Nathan Bateman with Tidewater LLC gave an overview of the ordinance amendment they are seeking. They are a little over 50% built out and are looking to refine original plan to complete the build out.

PUBLIC COMMENTS: No Public Comments.

Mr. McKeon stated he felt the presentation was pretty straight forward and had no problem with extension. The remaining Board members agreed.

Mr. McKeon moved that the Board recommend to Town Council the approval of the amendment to the ordinance that would expand the time period an additional six months. Mr. Israel seconded. Motion passed 5-0.

Item 5 Amendments to the Tidewater Master Planned Development District (Map) and the Tidewater Village Design Guidelines, in order to accommodate proposed development on parcel TV-3.

The proposed requested amendments for this public hearing can be broken down into four discrete items:

- Increase in size of building footprints
- Increase in number of dwelling units for TV2 and TV3.
- Allow two buildings on TV3 to be connected by a common, two-story lobby, stair tower, & elevator.
- Reduce required ground-level retail component.

Mr. Bateman again explained the purpose of the ordinance amendment as it relates to Tidewater. There was a maximum footprint of 8000 square feet of any one building. They have a potential user who wishes to relocate to this area and needs the footprint to be increased to 11,000 s.f. from 8,000 s.f.

PUBLIC COMMENTS: No public comments.

Mr. McKeon asked for confirmation that nothing has been built yet. Mr. Bateman stated that was correct, except for the satellite parking lot that was built to support TV-4. Mr. McKeon asked why all three buildings needed to be 11,000. Mr. Bateman explained that they would have one building 11,000 and two buildings at 4,000 each with an elevator shaft connecting the two. Mr. Israel asked for confirmation that TV-2 has condo units, and TV-3 would be rental units. Mr. Bateman confirmed yes they would. Mr. Chace supports the rental units, but stated that he would encourage the council to think about other ways to accomplish what is being asked for.

Mr. McKeon moved to recommend the proposed language changes to allow requested changes to parcel known as TV-3. Mr. Hickey seconded. Mr. Hickey asked Mr. Chace if he wanted his comments attached to the motion. Mr. Chace stated as the Council receives the minutes of the Planning Board, he was comfortable with his comments not being added to the motion. Motion passed 5-0.

Item 6 Amendments to the Tidewater Village Design Guidelines and the Tidewater Master Planned Development District (Map) in order to accommodate proposed development on parcel TV-4.

These proposed amendments were initiated and requested by the property owner of Lot TV4 in Tidewater Village, located in the commercial/mixed use area of the Tidewater Master Planned Development District along Clearwater Drive. These proposed amendments would amend the Design Guidelines and the Master Development Plan relative to parcel TV4 in the District in the following fashion:

1. <u>TV4 building</u>.
2. <u>TV4 building entry orientation</u>.
3. <u>Change in permitted use of parcel</u>.
4. <u>Change in maximum building size</u>.

Mike Hayes from Grant Hayes Associates gave an overview of the project which requested an additional use for restaurant and dining area and patio. Rivalries is being proposed. Mr. Hayes stated that during the site plan review process, they will demonstrate how they will meet the parking requirements of the ordinance. They are proposing 10 new public parking spaces along Farm Gate Road at their property line. Hours of operation will be similar to other restaurants in Falmouth.

Mr. Chace thanked Mr. Hayes for his presentation and stated that there was a request to change where the parking can be located in the Off Street Parking and Loading Standards from 500 feet from the parcel to 1300 feet from the parcel, but this request was withdrawn.

PUBLIC COMMENTS:

Bob Isler is a resident of Farm Gate Road and also member of the Board of the Tidewater Farm Homeowners Association. Mr. Isler explained that Tidewater Farm is an award winning mixed use development. Office use is the only use approved under TV-4 as there is minimum noise, traffic and lighting than with a restaurant. He felt there would be a dramatic traffic impact from a change of use. Homeowners were surveyed with an over 75% response. 97% of those who responded were against the project. Mr. Isler stated that the homeowners have no objection to Rivalries in Falmouth, but placing it on TV-4 would have negative impacts; and on behalf of 49 homeowners, he requests it be denied. He also asked that if these changes are recommended to the Town Council, that they have strict conditions added to ensure the compatibility of the homeowner development.

Tom Emery is with Foreside Architects in Falmouth and was retained by the Homeowner's Association to assist them with reviewing the proposed application. They are concerned that the Town Council is ignoring land use issues and larger master plan issues. Parcel TV-1 and TV-4 have been isolated in the master plan as they are smaller than the other two parcels, TV-2 and TV-3 and both have a single stand-alone building on each with restricted uses. TV-4 is a commercial gateway into Tidewater Village. He stated that this proposal does not conform with Tidewater Village Guidelines for TV-4 as it is not a permitted use. With respect to open space, Mr. Emery stated there did not appear to be a provision for buffering provided by the applicant. He feels the lot is too small and is very concerned about parking on Farm Gate Road. The general impression is that the Town Council is not concerned with the above-mentioned deficiencies. The homeowner's association is not anti-development; they just feel this project is on the wrong lot.

Diane Morabito is the President of Maine Traffic Resources and was asked to look at trip generation and parking issues between proposed project and current use. The current offices would generate 88 one-way trips on a weekday and very little weekend traffic. The proposed restaurant has much higher generation on both weekdays and weekends; 1198 weekday trips, 1492 trips on Saturday, and 1242 Sunday trips. The increase in traffic would be 75 times greater on Saturdays and 155 times greater on Sundays. She also pointed out that given higher traffic levels, the restaurant will require a traffic movement permit from Maine DOT.

With respect to the parking requirements, the former offices would need 23 spaces for average parking demand. The restaurant would need 154 spaces for average parking demand, which is seven times more parking needed for restaurant than office.

Mark Burns, an architect with Foreside Architects, spoke on parking and use of the building as it relates to this particular site. He stated that the building is too large for site, there is insufficient parking, and the occupant load is much too small. He then compared it to the Foreside Tavern. He stated that the parking issue didn't take into account the employees that would be parking on the site.

He asked that Board recommend to modify the building size to possibly a 4,000 square foot restaurant or reject the project altogether. They feel it's a great project, but the wrong site.

David Costello lives at 1 Marigold Lane, and he was asked by Tidewater Homeowners Association to speak on behalf of the homeowners. He first spoke about lot coverage and requested clarification on the lot size. Some literature stated it was 45 x100' and other literature stated 40'x100'. He asked that the Board clarify that for them.
Mr. Costello stated that the orientation has been change to front being on Hat Trick Drive and the back of the building towards the residential area. He stated there are no buffers in place. The loading and unloading areas have no buffers or screening. He is concerned with proper screening with respect to exterior walk-in coolers and dumpsters, especially emptying of dumpsters before 7 a.m. and after 7 p.m. Home owners are concerned that parking on Clearwater will become a hazard as the road was not designed for that type of traffic. Mr. Costello asked that the Planning Board recommend that outdoor seating not take place to reduce the noise.

Jim Katsiaficas, an attorney with Perkins Thompson, representing Tidewater Homeowners Association went over what was originally approved on Clearwater Drive. The Town Council approved office use only on TV4. He questioned why the restaurant is being proposed on this lot especially since there are larger lots. He stated the applicant is seeking a much larger use than the lot can accommodate. Mr. Katsiaficas stated that the Homeowners Association respectfully asks the Planning Board to recommend that the Council deny the project. If it is approved, he then stated that they request the Planning Board recommend limits be attached to the approval such as a maximum 4,000 square feet for the restaurant use, adequate traffic regulations so people won't be parking in front of houses, and suitable buffering to screen dumpsters, HVAC systems, and parking areas.

Tim Longstaff, a Falmouth resident and the General Manager of National Distributors in South Portland wanted to speak on behalf of the applicants who are some of the better customers he has ever dealt with. He feels they are a good match for Falmouth. They have a very successful restaurant. He cannot say enough good things about the applicants.

Tommy Johnson, a Falmouth resident, wanted to speak on behalf of proposal. He stated that the Tidewater Master Plan was a ten-year plan and not a forever vision. He stated that Falmouth has seen investment of $12m in Route 1 corridor and feels we shouldn't be sending the wrong message, to businesses who want to come into the area, and turn potential businesses away. As far as parking on Farm Gate Road, this is

a town owned road and should be able to handle parking. He stated that as far as this being the right site, the 8,000 square feet is divided into two spaces. The building would have the right look to match the character of the Tidewater community. He stated that the increased traffic will also expand with the ice arena, and it's possible that people will be walking or biking there and not using a vehicle. The concerns regarding dumpster and buffers, he feels the applicants will address the concerns for homeowners association.

Mark Huley, a resident of Tidewater, is opposed to project. He stated that during his research, he found that there was not one restaurant with a bar within 500 feet of any residential home within the town of Falmouth, but the Planning Board and Town Council are being asked to approve one within 250 feet.

Lance Meader, owner of Rivalries, stated that all of the other commercial land surrounding this neighborhood is zoned for commercial use. He felt the traffic issue is irrelevant as there could be a restaurant 30 feet away with same traffic issues, as well as hours of operation. There are a lot of public parking spaces in that area and VC-1 calls for shared parking. The money spent on Route 1 was to make pedestrian traffic more desirable. As far as the walk in cooler and HVAC, the mechanicals will be all screened with fences around it. The outdoor patio will feature background music which cannot be heard, nor will residents hear people talking. This will be fenced in and screened. The two stories were recommended by Town Planning to fit in with surrounding businesses.

Susan Nielsen, of 13 Farm Gate Road, clarified that Farm Gate Road is not a dead end road. She's concerned about the traffic as she walks her dog four times a day. During her evening walks, she can hear noise and commotion from Walmart and ice arena. She stated there is no room for a car and plow at the same time, and there is a sidewalk on one side only. As a homeowner, she stated there were a number of things she hears and sees because she's outside several times a day.

Public Comments closed.

Board comments:
Mr. Chace stated that several of the concerns raised would be discussed at a site plan review if the Town Council were to approve the project. He explained what the Public Hearing is for which is the re-use recommendation and zoning change.

Mr. McKeon stated he had a few questions for the traffic engineer. Mr. McKeon asked what the engineer meant by trips. Ms. Morabito stated that trips are a one-way trip either to or from the restaurant, and office use versus restaurant per 100ft. She also stated that a certain percentage of these trips would use Farm Gate Road, but not all. Mr. McKeon then asked if she was asked to do an analysis on TV-3 versus TV-4 to which Ms. Morabito stated she was not.

Mr. Israel stated there were significant objections from public and asked for the record to show that the comments stated here by the public be taken into account by the Town Council when deciding what to be done with TV-4.

Mr. Benzing stated he liked to see businesses coming into the area; although, he does share concerns of residents in the area, which are some of the problems with mixed use developments.

Mr. McKeon found this to be a difficult issue, but felt confident that his vote would be against recommending the change.

Mr. Chace stated that when zoning provision allows a building of 8,000 square feet or allows a certain amount of residential units in an area, it doesn't always mean that's what can be built. Planning Board would have the ability to reject, deny or amend the proposal during the review process and feels applicants will have an uphill battle to meet site plan criteria. Mr. Chace would be in favor of a favorable recommendation to the Council.

Mr. Hickey looks at this as a preliminary approval. The Planning Board should identify areas that would bog up proposal (i.e. parking) as now would be the time to codify them.

Mr. Chace disagreed with Mr. Hickey and stated that the Planning Board has been asked to consider three zoning item changes and whether or not they are acceptable.

The Planning Board then discussed the issues of the application such as the parking standards and whether or not that issue should be codified now or during the site review process. In response to Mr. McKeon's question on what site review standards apply to the application should the Planning Board recommend the zoning changes, Mr. Croce explained what development parameters in the Tidewater Master Plan would apply.

Mr. Chace asked Mr. Israel what his feelings were on the zoning changes to which Mr. Israel stated he could not support changes due to parking issues and quality of life impacts.

Mr. Chace asked Mr. Hickey for his opinion on the recommendations. Mr. Hickey stated he was generally favorable to the changes proposed in the application as long as the applicant was aware of the parking challenges which will be an issue during the site review process.

Mr. Chase entertained a motion from the Board. Mr. Benzing motioned to accept the amendments to the Tidewater Village Design Guidelines and the Tidewater Master Planned Development District in order to accommodate proposed development on parcel TV-4. Mr. Chace seconded. Motion passed 3-2 with Mr. McKeon and Mr. Israel opposed.

At request of Board, the meeting was recessed for 5 minutes to reconvene at 8:27.

The meeting was called back to order by Mr. Chace at 8:27.

Item 7 An amendment to the Zoning and Site Plan Review Ordinance to create a special overlay district for 60 Gray Road to accommodate additional parking in the front setback.

This proposed amendment was requested by the property owner of 60 Gray Road to remove the off-street parking prohibition for this one parcel and to allow off-street parking right up to the front lot line.

Mr. Chace asked for a property presentation. As there was no one representing the property owner in attendance, Mr. Croce briefly explained project to Board which is to create an overlay district specific to 60 Gray Road.

Public comments: No Public Comments.

After a brief discussion, the Board felt there was nothing in the application materials to show that this case is exceptional to allow front yard parking along one lot along Route 100. The Board generally had no concerns with the application except for the fact that they feel this is spot zoning. Mr. Chace stated that there is currently a committee dealing with this issue along the whole Route 100 corridor, and he is disappointed to see this in the packet. He is hoping that Board members will send a strong message that these spot zoning issues are not acceptable.

Mr. McKeon moved not to recommend amendment language with respect to 60 Gray Road. Mr. Benzing seconded. Motion passed 5-0.

REGULAR AGENDA ITEMS:

Item 8 **Paul Strout, Deirdre Wadsworth, Leslie & Maywood Wallace** – Meader Brook Drive– Request for Pre-Application Sketch Plan Review of a two lot conservation subdivision. Tax Sheet 440; Map-lot R07-098/098-D/098-E. Zoned F and RCZO.

The applicant was before the Board for a pre-application sketch plan review in August 2014 and is now requesting a second sketch plan review for the purpose of seeking Board feedback on five specific items related to the application.

Mr. McKeon recused himself due to a conflict.

Mr. Croce provided the zoning context for this project. Charlie Katz-Leavy from Verrill Dana on behalf of Deidre Wadsworth gave an overview and history of the project and handed out additional information to the Board regarding the history of project.

He explained that they would like to convey what they hope to accomplish which is clean up mess that started 24 years ago. He stated that the parcel could be reduced to 12.5 acre lot through exempt transfers to abutters. He also stated that the applicant is looking for leniency and flexibility from the Board regarding lot created more than 20 years ago. R07-98-F comes from different change of title.

Steve Bushey from FST gave an overview of the application which contained a series of drawings that explain land transfers. He went over these drawings starting from original parcel.

Mr. Chace questioned why he still sees the parcel on packet drawings as one lot. It was in the Planning Board approval from 1987 as creating two lots. Mr. Bushey did not have an answer to that question. Mr. Gaudreau stated that it may have been the division point between the right of way and the boundary line, but he doesn't believe that is what's recorded.

Mr. Bushey went through and explained each plan one by one and stated that a small 4.6 acre parcel had house built that went basically unnoticed but probably should have had a review.

Mr. Strout has ability to transfer a little over 33 acres of land to his adjoining land by a lot line adjustment which would leave a little over 12.5 acres to include the Wallace property, the Wadsworth piece, and common open space that would be retained by Mr. Strout. He would be part of the combined association with Wadsworth for the maintenance requirements of that open space.

Mr. Chace asked for clarification of Mr. Strout's remaining land. Attorney Katz-Leavy stated there were other options of transferring to other adjacent parcels.

Mr. Bushey then outlined Plan 6.0 on possible future development and possible roadways. As part of this presentation, he outlined the waivers being requested.

1. High intensity soil survey, the involvement of a landscape architect.

He stated that they would provide a new survey for the subdivision area for final subdivision approval encompassing the Wallace, Wadsworth and common open space areas. They still need to have a discussion about survey limits, what would be required, and if the survey needed to extend beyond the project property. The Applicants are looking for feedback from the Board on this issue.

2. Buffers and requirements for buffer limits around the perimeter of the conservation division.

3. Provisions relative to setbacks from any resources (i.e. wetlands). They have concerns with suggestions of the Board that the lot not have any resources identified on it. The Wadsworths are interested in maintaining the lot configuration as originally designed when the conveyance took place and have no plans on developing the back of the lot; so the 50 foot rear buffer is definitely attainable.

Public Comment: No public comment.

Mr. Chace asked Mr. Bushey, regarding the survey, if they were asking the Board to look at this project as a 12 acre subdivision. Mr. Bushey confirmed that they were asking the Board to look at the project as a 12 acre subdivision. Mr. Chace asked Ethan if that was the way the conveyance to abutters made sense and if it was the right legal approach.

Mr. Croce stated that the issue was raised last year when the project was first before the Board. Town attorney's opinion was the sub-divider was required to show all lands continuously owned on the subdivision plat. He stated that they were open to an alternate opinion, but they would request that it be put in writing to submit to Town Attorney for a formal legal opinion outlining rational why abutting lands are not required to be shown on plan.

Attorney Katz-Leavy stated that he felt there were two separate issues being discussed. The first was what parcels are being subdivided as certain transfers are exempt under Maine subdivision law. The second being what is the applicant required to show on the survey.

There was a brief discussion regarding the legal variables involved. Mr. Chace stated the Applicant could provide a legal opinion that the Town Attorney and the Board for review. He asked for further comments from the Board. Mr. Israel and Mr. Hickey both agree with Mr. Chace's suggestion.

Mr. Katz-Leavy asked for confirmation that if he prepared a memo to submit to Town Staff, it would be forwarded to the Town Attorney for review and comment to which Mr. Croce and the Board confirmed it would.

Mr. Bushey then spoke on the stewardship plan for common open space. Wadsworth and Strout would be party to this agreement. There are no plans to do anything in that zone other than possible walking paths. Mr. Croce encouraged the applicant to look at Appendix 8 for requirements for the Stewardship Agreement and ensuring that all of the Appendix 8 provisions are included in the agreement as the document needs to list any and all uses. Ms. Wadsworth reiterated the outlined allowable uses; the intended use is what the land provides currently. They are open to setting up the monitoring of the common space, but need to look to Town staff for help. Mr. Croce stated that the Falmouth Land Trust is most commonly used to monitor open space.

Mr. Chace asked Mr. Bushey if ownership of the common space would be owned by Mr. Strout and remain as is. He then asked if the ordinance allowed for that type of ownership. Mr. Croce stated it does allow the ownership to remain with individuals, but with respect to use, Mr. Strout cannot keep it for his use only. It has to be for common use and the legal documents need to provide for that.

With respect to the dead-end issue, Mr. Croce walked the Board through Appendix 5.D and 5.E. Meader Brook Way is an existing private way and private ways are treated differently than streets. The limitation of 15 homes on a dead-end street is specifically a subdivision standard.

The overall consensus for the dead-end street issue is that the Board has no issues with the waiver.

Mr. Bushey requested clarification of the lot configuration and resource pieces with wetland in back and asked if a 50' buffer was reasonable to be maintained from that buffer piece. Ideally, they would like a waiver of the 50' perimeter buffer. Mr. Croce stated the Town Attorney's opinion may help indicate where the 50' buffer will go, but the Board has no authority to waive requirement.

Mr. Bushey asked if there were any provisions to allow a split of a 50' buffer or if there are provisions for an agreement between abutting landowners.

Mr. Chace stressed his main concerns regarding conservation land and wetlands. Mr. Katz-Leavy stated that they are asking for and would be happy to provide perpetual no-build sections to keep areas in a protected and natural state. Mr. Bushey stated these were details that could be placed on the recording plat.

Mr. Bushey stated they would like to know if they need more information and supporting data for their waivers.

Mr. Chace stated that the Board would like to see application reference a little more ownership in creation of the lot and the difficult position that has been put property owners and the Planning Board.

After the discussion of the previous application ended, Mr. Hickey stated he attended the Comprehensive Plan Implementation Public Meeting and asked if Mr. Benzing could give the Planning Board an update on the direction LPAC is taking and it affects the Planning Board. It was decided that Mr. Benzing would discuss this with the Board members when they are all present at another meeting..

Meeting adjourned – 9:56 p.m.

Recording Secretary,

Lisa Sangillo