

**Town Council Special Meeting
Minutes
April 16, 2014**

The meeting was called to order at 7:00 pm.

Roll Call

Councilors Anderson, King, Orestis, Goldberg, Farber and Pierce were present and answering roll call.

Councilor Mahoney arrived later in the meeting.

Item 1 Public hearing on an amendment to the Falmouth Code of Ordinances regarding the notice requirements for a special amusement permit.

Chair Pierce opened the public hearing. There was no public comment.

An order was scheduled for May 12.

Item 2 Public hearing on a zoning amendment to establish a special overlay district for the Walmart Garden Center.

Chair Pierce opened the public hearing.

Elizabeth Andrews of Heron Point Road, a member of the Board of Directors of the Tidewater Homeowners Association and chair of their landscaping committee, showed the Council some photos of the neighborhood. She spoke of the attractive landscaping along Tidewater and Foreside Place, and the lack of landscaping on Walmart's side of Clearwater, especially around the current garden center. She spoke about the rules in the Route 1 ordinance pertaining to landscaping.

Public comment period closed.

Councilor Goldberg felt the proposed plan rectifies some of the landscaping concerns raised by Ms. Andrews.

Joan Fortin of Bernstein Shur, representing Walmart, reiterated that they are not looking to expand the site, but allow the outside sales they have had for the last few years. The plan is to improve that area fairly significantly. The proposed plan shows landscaping along both Clearwater and Hat Trick; sidewalks and pedestrian lighting along Clearwater, matching the pedestrian lighting on the other side Clearwater; and an 8' decorative fence that will screen the pallet storage area.

Councilor Farber asked for more detail on the proposed landscaping.

Amanda Stearns, Community Development Director, said there are 4 canopy trees and 4 existing evergreen trees that would either remain or be replaced. Additional shrubbery is also planned.

Councilor Farber asked about the sidewalk. Ms. Stearns said the current sidewalk will connect across Hat Trick and extend to the end of the retail area, with an improved crosswalk to move pedestrians across Clearwater. The sidewalk will not continue to Route 1 on that side.

An order was scheduled for May 12.

Item 3 Discussion regarding a Limited Development Agreement between the Town, Walmart and Falmouth Plaza, LLC regarding the construction and maintenance of Hat Trick Drive.

Town Manager Nathan Poore discussed the location of Hat Trick Drive and the improvements proposed. This will upgrade the current area to a two-way public way, by way of a public easement, and will include grass esplanade areas, a bike lane, sidewalks, a crosswalk to the sidewalk at Family Ice, and perpendicular parking on the Family Ice side. There will be a significant amount of landscaping on the Family Ice side, with decorative pedestrian lighting to match what is in front of Tidewater. The partnership agreement includes Walmart, Falmouth Shopping Plaza (the property owner) and the Town; the project is estimated at \$525,000 and will be divided equally between the three parties. The Town's portion would come from the Route 1 TIF funds, so it would not impact the Town's budget. Family Ice is a fourth party to this, since some of the traffic would be re-routed onto their leased property. Contributions from Falmouth Plaza and Walmart are capped at \$175,000; if the bids come in higher, the Town would have to carry the overage. Permitting costs are not currently included in the LDA; he would like to amend the LDA to include those permitting costs, but still maintain the cap. Also, the LDA specifically limits the parking lot by the warming hut to general public parking. He wants to make sure the proposed ice rink could also use that public parking lot.

Councilor Farber asked who decides how to trim the scope of the project if the bids come in high. Mr. Poore felt it would require all parties to trim the scope, since the plan is an exhibit of the agreement. The Town maintains control of not doing the project if it comes in too high, since the other two entities are protected by the cap.

Councilor King understood that the Town would be responsible if there was any overage. Mr. Poore said that was correct; the other parties are capped at \$175,000 which is higher than what they originally wanted. The cost estimates were drafted by an engineer working for Walmart and reviewed by Public Works Director Jay Reynolds.

Councilor Farber asked the timeframe for this proposed project and how it ties in with the proposed improvements to Clearwater as part of the Garden Center improvements. Mr. Poore felt the Garden Center improvements would happen fairly quickly; he thought the goal was to have the work on Hat Trick done this construction season.

Ms. Stearns clarified that the screening for the dumpsters must be fully installed by 45 days after passage of the amendments; the landscaping improvements require a performance guarantee and have to be complete by December 31, 2014, with a one-time 6-month extension allowed.

Councilor Mahoney arrived at the meeting.

An order was scheduled for May 12.

Item 4 Update by the Community Development Committee on the preparation of final Route One Infrastructure Plan Construction Documents.

Councilor Anderson gave a brief history of the CDC's work on this project. They have reviewed bids and have selected a contractor. The low bid came back about \$1 million above what they had anticipated so they have developed some changes to the plan to bring it back within budget. The original concept approved by the voters is still intact. They focused on cutting things that could be added at a later date. They reduced the number of trees proposed to be planted; deferred some of the benches; reduced some of the coverings on manholes and made slight changes to underground infrastructure. They cut back on street lights and pedestrian lights to some degree, but there will still be an increase in lighting from what

is there now. The underground power will begin a little further north than was originally planned; they wanted to start it at Waldo's Store, but it will now start about 100 yards north of that. The affected businesses have been contacted. With the proposed changes, they are now within budget. The construction will begin this spring and will continue into the spring of 2015; the paving will take place mid-year 2015 as planned.

Item 5 Order to amend the Street Excavations Fee Schedule.

Chair Pierce explained that this would allow Summit to pay a lump sum for opening the street to install the natural gas pipeline, instead of paying by linear foot.

Chair Pierce opened a public comment period; no public comment.

Councilor King moved the order; Councilor Farber seconded.

Mr. Poore explained that the goal was to streamline project for the utility and the three communities involved. They have contracted with Gorrill-Palmer to oversee the installation on behalf of the towns, and the fee is designed to cover the cost of that contract.

Councilor King asked if this change will impact the ordinance with regard to overseeing how the streets are opened and closed.

Mr. Poore said that is completely within the Town's control; Gorrill-Palmer will have three people on-site to oversee the work. The ordinance will not change; this is just changing the fees. Town staff will also be out in the field inspecting the work, but they do not have the resources to do all the oversight required.

Councilor Mahoney said the cost of repaving and backfilling would be covered by Summit; Mr. Poore said that was correct. They are working on having both a performance bond and a cash escrow, to guarantee any work that might be left unfinished.

Councilor Mahoney said the only costs the Town will incur are staff time coordinating with Gorrill-Palmer. Mr. Poore said that was correct.

In response to Chair Pierce, Mr. Poore said this is for just this construction season; they will have a discussion next winter about how things went and could revise the fees based on that review. They will be dealing with this annually for the next 3-4 years.

Councilor Anderson asked about the proposed timeframe. Mr. Poore said they are scheduled to break ground in the next month.

Mr. Reynolds said Summit has bid out their side of the work and are close to awarding a contract. They will likely start at the end of April/beginning of May in Cumberland and then progress into Falmouth. He discussed the proposed progression of work. There will be a pre-construction meeting in the next few weeks.

Motion carried 7-0.

Item 6 Discussion about options to replace the River Point railroad crossing bridge and order to approve a supplemental appropriation of \$450,000 from Unassigned Fund Balance to construct a new bridge.

Chair Pierce opened a public comment period; there was no public comment.

Councilor Farber wondered about the recommendation for both the 6-foot and 10-foot bridge, and she asked about the weight bearing capability of all the proposed bridges.

Mr. Poore said, if they were to go with a 6' bridge, they would recommend the same contractor as for the 10' bridge. The 10' bridge option can support 15 tons; the 6' bridge can support 5 tons.

Councilor Farber thought that the trucks could get across the 6' bridge, even though it would be tight. Mr. Poore said no, you cannot get a vehicle across the 6' bridge. It would allow for lawn maintenance equipment, but nothing larger.

Councilor Goldberg said the Town does not have an easement for parking at Hannaford for River Point. Mr. Poore confirmed that is the case; there is an agreement but it is not in perpetuity.

Councilor Goldberg wondered if they could install parking on the other side of the bridge at River Point. Mr. Poore said they do have an agreement with Hannaford but no legal easement; they could install parking at River Point, but the bridge would be one-way only.

Councilor King wondered about developing a better, longer-term agreement with the adjacent property owner. Mr. Poore said the option of a permanent easement was pursued, but the answer was no.

Lucky D'Ascanio, Parks and Community Programs Director, said the agreement was negotiated between Hannaford and Bob Shafto. They expressed the desire that any permanent parking be provided on the Town property. There is a verbal agreement now for the parking. The 10' bridge would have bollards or fencing installed to prevent vehicular access, but still have the width for maintenance or emergency vehicles to get to the property.

Councilor Anderson understood that a 6' bridge would not accommodate emergency vehicles and that Chief Rice requested a 10' bridge for that reason; Ms. D'Ascanio said that was correct.

Councilor Mahoney said fire trucks couldn't get across due to the width; Mr. Poore said it is actually a weight issue not a width issue. They could get an ambulance across the 10' bridge, and a utility truck to fight a brush fire.

Councilor Mahoney wondered where the truck would go from there if it got across the bridge since there aren't roads on the property. He asked if the goal is to have vehicular access to the whole property in case of a fire. Mr. Poore didn't think the fire department has an official brush truck with water tank, but other towns that would respond to mutual aid do; the property is accessible by 4-wheeler.

Councilor Orestis wondered if a brush fire or emergency necessitating a vehicle has ever happened over there; Mr. Poore didn't know.

Councilor Farber pointed out that they don't talk about emergency vehicles getting into Hadlock Forest or on top of Blackstrap. She wondered why they are talking about that with this property.

Councilor King pointed out that the property is isolated due to the access difficulties. She asked how much accessibility they need at River Point.

Chair Pierce asked if 6 feet would be wide enough to get a tractor in to bush hog the property. Ms. D'Ascanio said it would be, but it would limit the type of equipment they could use. A 10' bridge would allow them to use bigger equipment to do the job more efficiently.

Councilor Anderson asked how often they mow the property.

Bob Shafto, Open Space Ombudsman, said the goal of this bridge was both to get people across and to manage the early successional habitat on the property. The only way to keep that rare habitat is to mow. They haven't done much management yet due to the difficulty of getting equipment over there, though they have a management plan in place. The 10' bridge was in case they ever lose the parking on the Hannaford side some day. The brush was cut 4 years ago in the middle field; the other three fields are rapidly growing into woods. They need to be cut now, and then they would be cut every 3-4 years on a rotating basis.

Councilor Anderson asked about the current bridge; Mr. Shafto said it is currently 6', but it was originally 12'. A new 6' bridge would allow them to get a tractor with a bush hog over it.

Councilor Orestis asked about emergencies on the property; Mr. Shafto said they have been very lucky on all the properties with regard to injuries, but they might want to use a controlled burn on the property at some point for management. A rescue truck with water would be imperative if they did that.

Councilor Farber pointed out that the property is accessible by pedestrians on Falmouth Road, and parking is available there. This isn't the only access point. Mr. Shafto agreed, but that is over half a mile away.

Councilor Orestis wondered what would happen if they did nothing for this bridge and eventually didn't have it anymore.

Councilor Mahoney said the bridge is becoming dangerous and will have to be removed soon. He said having two points of access to the property is a critical piece of why they acquired the parcel in the first place. This access point is highly used and they need it to be safe and reliable. ADA requires a 5 foot width, so that is the minimum size they can look at. He wasn't convinced that they need 10'. He felt if there was a serious accident at River Point there could be an indirect route to gain access. He would rather have the 6' span. He felt it was unlikely that the owner of the Hannaford property would deny the Town a few parking spaces for public use.

Councilor King asked about the rehabilitation project that was proposed. Mr. Poore said that proposal didn't include removing the two piers that are within the train crash zone, which might be a problem down the road. The new bridge would not have any piers. He felt it was a better investment to spend an additional \$20,000 for a new, 6' bridge instead of repairing the old one.

Councilor Anderson agreed with Councilor Mahoney; he felt there was little risk of losing the parking.

Councilor Goldberg said the value of open space is both conservation and access; spending this kind of money to make the property more useable is as valuable as buying a new piece of open space. He felt they need a new bridge, but wasn't sure they need a 10' bridge.

Councilor Farber moved an order to approve a supplemental appropriation of \$400,000 from Unassigned Fund Balance to construct a new 6' bridge; Councilor Anderson seconded.

Councilor Orestis asked about the lower 6' bridge bid; Mr. Poore said the lowest bid was incomplete, and some of the proposed design elements were not favored by staff. The second-lowest 6' bridge bid mimics the design of the proposed 10' bridge recommended by staff.

Councilor Mahoney asked why the bids did not include contingency and if they did, why the Town is advocating adding additional contingency.

Mr. Poore said the companies' bids included their own contingencies, but he was concerned with the complexities of crossing the high-speed rail and advocated for the Town to hold additional contingency.

Chair Pierce felt this was a complicated project and didn't have a problem with the proposed contingency.

Councilor Mahoney felt this was a RFP and there is no risk to the Town; if the cost comes out higher, the risk should be on the construction company. The Town would only pay if there were change orders.

Councilor Anderson asked if the \$400,000 includes the monies they will have to pay the railroad; that number is a lot softer than the cost of the construction.

Mr. Poore said it does include that, though he felt they should know the cost of insurance and permitting from the railroad. He didn't recommend going without a contingency. This is a design/build project, so it

isn't fully designed yet. They are working with an owner representative, who might suggest improvements that haven't been considered yet and would result in a change order.

Motion carried 6-1 (Orestis).

Item 7 Discussion about public input related to a concept plan to renovate the Mason Motz building and transform it into a Community Programs Center. This agenda item will also include an order to approve an additional supplemental appropriation of \$15,000 for the services associated with final design and bidding of a construction project related to renovations and upgrades of the Mason Motz Facility for a community center.

Chair Pierce opened a public comment period.

Melanie Collins of Middle Road is a member of PACPAC and highly recommended the money for the energy audit of the buildings. She had an energy audit for her home and has saved 75% on her energy costs since then.

Jeff Gramlich of West Circle is a member of REAC. On April 1, REAC discussed the Mason/Motz improvements and he read a letter from the committee stating that they support an energy assessment prior to construction, and encouraged the Council to investigate a broad array of energy sources. They suggested using the Town's revolving energy fund to pay for the increased cost of an energy-efficient heating source.

Public comment period closed.

Councilor Goldberg thought the base case estimate included some energy efficiency upgrades. He wondered how any recommendations from an energy audit would differ from the base case estimate.

Ms. D'Ascanio said all the attendees of the public tours were enthusiastic about an energy audit for the building. The base case included energy efficient lighting and assumed a move from oil to natural gas.

Councilor Goldberg wondered what recommendations would come out of the energy audit. Ms. D'Ascanio thought they would look at other ways to heat the building, as well as look at future options for energy efficiencies like installing solar panels, clapboards over the brick to increase insulations, etc.; those items could be included in a capital improvement plan in the future.

Councilor King discussed some of the areas that would be evaluated as part of an audit, including the building envelope, current utility bills, testing to determine the construction of the walls, and calculating existing energy loads.

Councilor Goldberg wondered about any improvements that would be found as part of the audit that might not be deferred but would be done as part of the short term work. Ms. D'Ascanio said it was possible. There are many projects that depend on what the bids are when they come in.

Councilor Goldberg asked about any feedback that was not related to the energy audit.

Ms. D'Ascanio said most of the people that attended were not regular patrons of Community Programs. She felt they left supporting the use of the building and impressed with the amount of use the building has already. They left as supporters of the project.

Councilor Orestis asked if they had any suggestions for uses that might impact the proposed designs.

Ms. D'Ascanio said some discussed the option of meeting space for older residents. Nothing was suggested that would impact the budget or the design. One individual did mention that she wanted a pool.

Councilor Anderson pointed out that some seniors wanted a meeting space where food could be served; that isn't a service that they provide today.

Chair Pierce said she and Councilor Farber met with Oceanview and told them about the open house; they were very positive about this project and felt it had synergy with what they are looking at for Plummer. Chair Pierce said the biggest thing that might come out of the energy audit would be an alternative heating source.

Councilor Orestis moved the order; Councilor Goldberg seconded.

Councilor Goldberg asked if they would lose any time by doing an energy audit or if it could happen at the same time as the construction.

Mr. Poore said it would happen at the same time; whatever heating source they decide on, it must be installed by the next heating season. He clarified that this \$15,000 would be added to the \$75,000 they approved previously for the design of the project, bringing the total for design to \$90,000. The next time they discuss this, they would have construction bids to review.

Chair Pierce said when the school board was discussing the energy items they had a committee to review those recommendations. She asked who would bring these options to the Council for this project.

Councilor Farber wondered about asking PACPAC and REAC to send one member each to review the audit with town staff. The Council agreed.

Motion carried 7-0.

Item 8 Councilor Anderson to introduce a zoning amendment to accommodate the construction by Casco Bay Hockey Association (CBHA) of a covered ice rink, locker rooms and bathrooms at Village Park.

Councilor Anderson discussed the proposed project; the amendment would carve this parcel out of the VC-1 district, since the district requirements don't work for an outdoor hockey rink.

John Veilleux of CBHA said they are working with Revision Energy to install solar panels, which would supply all the electricity needed for the rink. A zoning amendment is required to make this project work; they would be close to the VC-1 district guidelines, but couldn't meet all of them. The amendment would only cover this site. They would conform to all other VC-1 standards.

Andy Hyland of Port City Architecture presented an aerial photo of the site and showed the location of the proposed covered rink. The zone proposed would cover the parking lot and the building itself; the park, gazebo and maintenance building would remain the same. The current warming hut would be removed. He discussed some of the proposed design for the building and the landscaping. They have consulted with a landscape architect, and are proposing to install evergreens along the side to screen the residents from light and noise. The Zamboni would be stored in an enclosed garage within the building. It will remain within the rink.

Steve Blais, of Blais Civil Engineering, discussed the zoning map. They were originally discussing limiting the zone to the property line, but they might want to extend it to the parking lot. He discussed the current district requirements they cannot meet: permitted uses; dimensional standards, including the front setback; architectural standards, to allow them to use metal siding; architectural design requirements that require all four sides to be equally attractive, since this building only has one side; and fenestration at the front façade, since the front of the building includes locker rooms. They are planning windows at 7-10 feet apart, but they cannot meet the 30% rule. The existing parking lot is between the proposed building and Hat Trick drive, and they are also requesting to remove the requirements of screening from Hat Trick.

Mr. Veilleux pointed out that meeting the front setback would require them to build the rink in the parking lot, removing use of the field and making the project untenable. They have made the building as aesthetically pleasing as they could. They are meeting the VC-1 requirements as best they can, while keeping the project cost effective.

Councilor Mahoney asked if the field needs to be within the proposed zone in order for the project to work, and wondered if they can carve that out.

Ms. Stearns felt that the entire useable area of the park should be within one district for clarity. If the Town wanted to replace the gazebo, it should be held to a different standard than the rink. She wanted to make this as simple as possible.

Councilor Mahoney asked what they lose by taking that portion out; these zoning changes are very specific to this structure and he didn't think they were transferable.

Ms. Stearns said if the zoning was not changed, if anything was built at the park it would have to meet the setbacks and would need an amendment. She said there will be changes between now and the public hearing so she can revisit the zoning boundary before then. She pointed out that the parking lot is divided by the parcel line; the other side is owned by Falmouth Plaza. She echoed Mr. Poore's comments from earlier that all the parties should be on board to an open parking scheme in that lot.

Councilor King asked about the line that ends the proposed district from the rest of the town land; Ms. Stearns said she incorporated the developable land in the proposed district. The rest of the town land is mainly wetland and would not be developable.

Councilor Farber asked about the windbreak and how that would be controlled, so that it isn't an offensive color.

Ms. Stearns said they could discuss that. The project includes a chain link fence, which is not allowed by the district, but is necessary to prevent pucks from flying out and hitting people. They had discussed the treatment of that fence and can include treatment of the windbreak as well. There are two elements of this; the ordinance amendment and the site plan, which will be reviewed by staff and will include very specific design details. The Council will approve the site plan at the same meeting as the order for the zoning amendment. The Planning Board will hold a MRA hearing for the zoning amendment only, and will not review the site plan.

Chair Pierce encouraged staff to review this whole area in its entirety, from the Garden Center down Hat Trick and to the rink so that it all works together.

A public hearing was scheduled for May 12.

Item 9 Presentation by the Community Development Committee on recommended priorities for land use actions of the Comprehensive Plan.

Councilor Anderson explained that the full Council asked the CDC to discuss rural areas versus growth areas in the comprehensive plan. The CDC identified a need for a clear definition of the boundary between the two areas. On the map included in the comp plan, there are some instances where the boundary bisected parcels. He said their recommendation was that, in those instances where a parcel crossed the boundary, that parcel would be considered as within the growth areas. That affected about 55 parcels. The CDC feels that there needs to be a balanced approach, to facilitate more growth in the growth areas while also placing rules to slow growth in the rural areas. They discussed using the expertise and knowledge of LPAC to implement this and so they have asked to have LPAC review the growth areas and suggest how to facilitate residential growth in those areas, in keeping with the vision of the comp plan. The CDC would come up with mechanisms to slow growth in the rural areas. These two things together

would move them toward the overall vision of the comp plan. The CDC have discussed some options on how to slow growth in the rural areas, including increasing minimum lot sizes, growth caps, reducing the number of lots approved in any given year, instituting impact fees, and having the Town either purchase land outright or just the development rights of land.

Councilor Orestis asked about how they would determine whether a parcel that was bisected by the growth line but included wetlands or protected resources would be treated. Chair Pierce said no one would have to develop their land; this gave landowners more flexibility with what they can do. Councilor Anderson said the wetland protection ordinance would not be watered down in the growth area; those would remain in place.

Councilor Farber asked if they would need to amend the comp plan; Councilor Anderson said they looked at that and they didn't think so, since they weren't making any large changes.

Councilor King asked if the proposed line was drawn to conform to particular lots. She worked on the comp plan, and remembered that the idea of the rural area that is located on Mountain Road was because there is no sewer there.

Chair Pierce said they didn't change the bigger boundaries; if the comprehensive plan had a location in rural, they kept it there. Where parcels were bisected by the boundary, they moved them to growth to provide more flexibility to the property owners.

Ms. Stearns said there are some long parcels where the portion of them along Brook Road was within the growth area and that gave the impression that the growth area was expanded. There are four lots out there that do not touch the growth area.

Councilor King thought that, with some of the long lots, you might not want to develop the back since it is so far from services. She asked if they would ever put the growth/rural line within a property if the front of the lot is good for development, while the back is not.

Councilor Anderson felt it would be difficult, and likely unenforceable, to have a lot that was bisected by both areas. They didn't get into that discussion.

The consensus of the council was for LPAC to work on the items as identified by the CDC. The CDC and LPAC will move forward with the land use items.

Item 10 Discussion about future Council agendas.

Mr. Poore discussed upcoming Council agenda items.

Item 11 Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider the acquisition of real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).

Councilor Goldberg moved to enter executive session; Councilor King. Motion carried 7-0.

Adjourn

The council adjourned from executive session.

Respectfully submitted,

Melissa Tryon
Recording Secretary