

# **Town Council Meeting Minutes August 11, 2014**

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

## **Roll Call**

Councilor Mahoney was absent.

## **Item 1 Public Hearing on an amendment to the Code of Ordinances to change the organizational structure of the Harbor/Waterfront Committee.**

Chair Farber opened the public hearing.

Timothy Tolford of Underwood Spring Way is a member of the Board of Directors of the Yacht Club and spoke of his involvement with the Portland Yacht Club and with the Town's Harbor/Waterfront Committee. He discussed the work that the Yacht Club does with the Town to help maintain the anchorage, and the number of moorings they own in the mooring field. He said no one on their Board of Directors knew anything about the proposed ordinance until they saw it in the Forecaster. They do not want to lose their status on the Committee, and want to keep their voting privileges.

Jay Meyer, a resident and member of the Yacht Club, echoed Mr. Tolford's statements. The Club is opposed to both proposed changes. The Yacht Club holds 303 of the nearly 1250 moorings in the mooring field and is a significant taxpayer in Town. The Club has had a long-standing role in helping maintain the mooring field, as well as providing parking and launch access for their members which helps to alleviate the strain on Town Landing. He pointed out that the proposed changes are driven by Handy Boat, which might not be able to produce an employee who is also a Town resident to fill the committee seat. He suggested that either they allow Handy Boat to produce a town resident to represent them, treat the entity itself as the resident instead of the representative, or allow Handy Boat to lose their voting rights.

Public hearing closed.

Councilor Goldberg wondered about any risk to the clubs of not having voting rights on the Committee.

Chair Farber asked for the history behind the clubs having voting rights on the Committee.

Mr. Tolford said that prior to 10 or 11 years ago there were members of the clubs sitting on the Committee, but there was no official representative for either of them. The Coast Guard changed the mooring designation, and the Committee needed help with that process. The Committee looked to the clubs, since they maintain 60-70% of the moorings. The Committee was expanded to 7 people from the original 5 at that time. Excluding the clubs from having a vote will mean 60-70% of mooring owners will not have a voice on the Committee.

Councilor King felt it was important to have the clubs' input when discussing harbor issues, but it doesn't mean they have to have a vote. She wondered if they would lose that input if they didn't have a vote.

Councilor Anderson didn't understand the rationale for this proposed change. He was in favor of considering the entity as the resident, and allowing them to have voting rights that way. He suggested that, in light of the opposition from the Yacht Club, they table this item.

Councilor Anderson moved to refer the amendment to the Harbor Committee to come up with options that all affected parties can agree to; Councilor King seconded.

Councilor Goldberg said the issue stemmed from last year when Handy Boat did not have an employee that was a Falmouth resident available to serve on the Committee.

Councilor McBrady supported further study into the issue; he was concerned with the Yacht Club's opposition. Councilor Hemphill agreed.

Councilor Goldberg asked if there was a pressing need for this change; Chair Farber said it is still a functioning committee.

Chair Farber suggested that this be referred to the Appointments Committee or the Ordinance Committee; she felt that would be more effective. When this was first raised, she spoke with representatives from both organizations, and neither of them supported it.

Chair Farber moved to amend the motion, to refer this to the Appointments Committee instead of the Harbor Committee; Councilor Anderson seconded. Motion carried 6-0.

Amended motion carried 6-0.

The Council requested a report from the Appointments Committee within 8 weeks.

**Item 2     Review and offer input on a proposed referendum question planned for the November 4, 2014 election and discussion regarding the development of a Memorandum of Understanding (MOU) with the Falmouth Memorial Library associated with a proposed expansion.**

Mark Porada, president of the Board of Trustees, addressed some of the concerns raised by the Council at the last meeting. He has confirmed that there are sufficient funds in their undesignated fund balance to pay off the \$300,000 note they have from the Town to purchase the adjacent property, in case their fundraising was not sufficient to cover it. In regards to releasing the fundraising consultants' detail report, he explained that it contained information from potential donors that they requested remain confidential. He therefore can only allow the executive summary to be released.

Town Manager Nathan Poore said the details of the referendum question would impact the details in the MOU and he discussed the issues remaining to discuss with regards to the language of the referendum and the MOU. One of the items is whether the Council is agreeable to spending up to a certain amount, currently estimated at \$400,000, for final design work prior to fundraising being complete.

Councilor Anderson wondered what they gain from authorizing an early release of that money, if the bonds had not yet been issued.

Mr. Poore said they only need that in the language if there is a condition that the project will not go forward if there isn't sufficient fundraising. They can fund that money with a supplemental appropriation from fund balance to be replenished when the bond was issued, or with a bond anticipation note.

Chair Farber pointed out that if the project did not go forward, those preconstruction costs would be split equally between the two parties.

Councilor King wondered which would be a better financial decision; Mr. Poore said the interest charges on a bond anticipation note would be nominal.

Councilor Anderson wondered why they would expend \$400,000 up front. He felt it was unwise to commit that large a sum of money until they were sure the project was going to go forward.

Chair Farber pointed out that \$400,000 is a placeholder amount and hasn't been debated yet. If the project is put on hold until the fundraising is complete, which might not be for a year, they would lose a year of productive time.

Councilor Goldberg though this is like the Route 1 project, where the Town had to put out money in engineering and design work prior to being able to go out to bond.

Mr. Poore said in that case the bulk of the money was spent after the referendum passed, but they did have a lot of work to get to a final number.

Councilor King pointed out that keeping momentum with a project is also good for the fundraising effort.

Councilor Anderson said the 1994 MOU had language that limited the Town's financial involvement to a certain percentage. He wanted to see the Town's contribution capped at 50%, in case the project was less than anticipated.

Chair Farber asked if Councilor Anderson wanted to see them stay at 50% and not to exceed a certain amount, in case the library wanted to do, and was able to pay for, an expansion of the project.

Councilor Anderson wanted to see it capped at either the \$2.8 million or 50% of costs, whichever is less.

Councilor Goldberg pointed out that this is the library for Falmouth. Even though it is governed by a separate entity, it is the Town's library. He felt the request for \$2.8 million is in consideration of what the Town would accept, and not what the Library would like to ask for. He felt that, since this is their library, he was willing to look at a higher number.

Councilor McBrady was concerned with the discrepancy between the fundraising report's estimate of \$2.5 million and the fundraising goal of \$2.8 million; he wondered what would happen if the Library didn't raise enough.

Councilor Hemphill felt the Council needed to support this project; he wanted the Library to succeed and for the Town to contribute.

Councilor King felt they needed a sense of how much they could stretch, while at the same time encouraging the fundraising effort. She wondered if they have any flexibility and what that might look like.

Councilor McBrady wondered if the Library was willing to contribute to the preconstruction costs. Chair Farber said only if the project didn't go through; in that case they would reimburse the Town 50%.

Councilor Anderson said the Town has an arms-length relationship with the Library. He supported improving the library building and always has, but it needs to be done in a way that protects the taxpayers and is responsible long-term. He felt there was a limit to what the Town should contribute and that 50% was reasonable; it was reflective of their ownership of the building currently, and puts a reasonable limit on the costs.

Councilor Goldberg supported limits on the project, but didn't want to put up a hurdle that the Library couldn't overcome. He wanted the project to succeed and wanted to hear the number that the Library would ask for, and not the number they thought the Town wanted to hear.

Mr. Porada agreed that the Trustees felt their best chance of gaining the support of the Council was to suggest a 50/50 split. They certainly wouldn't be opposed to a greater Town share. The library is the best, most well-run financial asset the Town has. Many surrounding communities operate their libraries as a department of the Town, and would request 100% from the Town for any expansion plans. This library raises 25% of their operating costs every year through private fundraising. This library is an incredible bargain to the Town. They do not have another number to propose, because they never discussed another number.

Chair Farber pointed out that this arrangement works well for the Town. She wanted to see this project happen; she wanted a successful library that is renovated to meet its needs. They have the history of the 50% split and thought there would be support from the voters for that, but the fundraising report said they

could reasonably raise \$2.5million. \$2.8 million is only \$300,000 higher; she wondered why they would risk the project over that amount. She wondered about setting the referendum to \$3.12 million, thereby setting the library's portion to \$2.5 million.

Councilor King said this project is different from the everyday running of the library, so thinking whether the 50/50 split is appropriate to this situation was valid.

Councilor Anderson supported 50%, with perhaps language that offered that the Town would match the Library's fundraising, dollar for dollar. Councilor McBrady agreed; he felt it would stand a good chance of passing at 50%, and it followed a good precedent.

Councilor McBrady said he would support spending the \$400,000 before the fundraising; he didn't want to delay the project.

Councilor Anderson wondered why the final design would give a boost to fundraising.

Mr. Porada explained that this money would allow them to draft up more detailed designs, schematics, and 3-D modeling to show potential donors what the project would look like. The consultants have told them that the closer they are to final design, the more enthusiasm and support they will get from the general public. If they don't do this work ahead of time the project will be stalled once the fundraising is complete.

Chair Farber said the purpose isn't to drive fundraising, but to make it so they are ready to go out to bid as soon as the fundraising is complete. They would then be able to start the project as soon as the bond was issued.

Councilor Hemphill supported the expenditure of the design funds prior to bond issuance.

Chair Farber said the Town's exposure would only be half of that number, and she thought the project would move forward. If the pledges didn't come in, she felt the Library would come back with changes to the plans rather than end the project.

Chair Farber asked about the proposed condition of the bond being issued only upon the Library's fundraising being successful; she asked the Council whether they wanted to put it in the MOU instead. Putting the language in the referendum would bind the Council.

Councilor Anderson said the current referendum is slightly foggy; the draft states "contingent upon sufficient funds being raised". Mr. Poore said there was clarification in the bond order that the funds have to be there to complete the project "substantially as designed". A future Council could determine what qualified as "substantial".

Councilor Anderson wanted it to be clear to the voters what their share is. He felt it was irresponsible to release substantial funds before they know with great certainty that the project is going forward.

Councilor Goldberg wondered if language like this affects fundraising. Mr. Poore felt it might; it essentially states that, for the project to move forward, they have to have the funds.

The Council discussed the referendum language. Councilor Anderson wanted the language of the referendum to state that the issuance of the bond was conditioned upon the library raising \$2.81 million. Chair Farber was concerned with using the term "raising" and whether that would limit the Library. The consensus of the Council was for some conditional language regarding fundraising in the referendum.

The Council discussed the preconstruction costs; Councilor Anderson didn't feel they should be included with the bond issuance, but Chair Farber explained that they needed to be included, both because the Town would reimburse themselves from the bond funds, and also because the referendum is both permission to borrow the funds as well as permission to spend.

Mr. Porada said they have spoken with the architects and that number would be closer to \$300,000.

The Council discussed the MOU. Councilor Anderson wondered what the library expects in regards to closure of the library during construction. He also wondered about proportional share and the draw procedure during the project.

Councilor Anderson asked about language in the bond order that defines “costs” and refers to land. He wondered if the purchase of the Kowalsky property is part of the project or not.

Mr. Poore said the MOU spells out that the Kowalsky property is specifically excluded; he felt this paragraph is standard language and not specific to that parcel. He would discuss it with Bond Counsel.

Chair Farber suggested that the Council offer public comment at the next meeting on this item, but that the formal public hearing would be scheduled at a later date.

**Item 3      Presentation of Verizon Wireless's request for conditional rezoning for the construction of a Tier III Personal Wireless Facility at 121 Field Road, Map-Lot R03-079.**

Community Development Director Amanda Stearns gave a brief overview of the review process for this project.

Kelly Boden of Verrill Dana, representing the applicant, explained that there are significant gaps in cellular service in Southern Maine and there are increasing demands for data access. The Falmouth ordinance has three tiers for the purposes of permitting: Tier I, for towers on existing buildings, requires a permit from Code Enforcement; Tier II, co-location on existing towers, requires Planning Board approval; and Tier III, for new towers, requires this conditional rezoning process. Verizon has applied for a Tier I permit to install a steeple extension at the Foreside Community Church and a Tier II facility for co-location on an existing US Cellular tower on Woods Road. The Tier III application is for a new tower at 121 Field Road. It would be 117 feet tall, 120 feet at the tip of the antenna. This is not a stealth tower, and Tier II facilities are not allowed in the zoning district, so they must apply for the Tier III.

Councilor King asked why Tier II facilities are not allowed in Farm & Forest District.

Ms. Stearns said staff's best guess is that the authors at the time the ordinance was adopted wanted new towers of this size to go through conditional rezoning, to make sure they were thoroughly vetted.

Chip Fredette of Vital Site Services explained that voice access is sufficient in Town, but they want to improve 4G data access. They are currently at capacity with the towers they have. Verizon has two licenses: the LCE or 700 MHz spectrum, and the AWS or 2200 MHz spectrum. Verizon does not have its own tower in Falmouth; currently they only have co-location on existing towers. He showed a coverage map in Falmouth that detailed the availability of data coverage in Town as well as the proposed coverage if the tower was installed on Field Road. He discussed the proposed location and showed photos of it. The property was once operated as a gravel pit, and they would be able to use the existing road as an access road for the site. The power for the tower would be underground. They have held a balloon test to determine where the tower would be visible. He showed photos taken during the tests that showed what the balloon looked like, and a model of what the tower would look like. He discussed the advantages and disadvantages of a mono pine design as opposed to a mono pole design. The Planning Board would determine which design was used.

Chair Farber asked about the notice requirements; Ms. Stearns explained how the public would be notified of the hearings at both the Council and Planning Board level.

Councilor King asked how they determine whether coverage is sufficient.

Mr. Fredette said the information comes from their performance and operation departments, which say that their service is overloaded. The sites in Falmouth can't handle the load that is being placed on them. The plan is to use not just the 700 MHz frequency but also the 2200 MHz frequency in order to address the problem.

Councilor King asked about a reference to the tower serving 500 users. She asked how many people the tower would serve. Mr. Fredette said they could provide that.

Chair Farber read from the zoning ordinance: *All conditional rezonings by the Town Council must: 1) be consistent with the Comprehensive Plan and the Open Space Plan; 2) establish rezoned areas which are consistent with the existing and permitted uses within the original zones; and 3) only include restrictions which relate to the physical development or operation of the property.*

Ms. Stearns said section 3.12 also gives the Council the authority to defer and request a recommendation from the Planning Board prior to considering the rezoning.

Chair Farber asked if a Tier III tower was consistent with the comp plan; Ms. Stearns didn't think the comp plan had any guidance on communication facilities. She recommended that, in the absence of guidance from the comp plan, they rely on the zoning ordinance and wireless facility siting ordinance.

Chair Farber wondered about referring the ordinance to the Planning Board. Ms. Stearns said, while the Board will hear it at the MRA stage, that process only encompasses the administrative portions of the proposed ordinance. The Board could discuss both the merits of the proposal in regards to the criteria in 3.12 and the administrative aspects at the MRA hearing if the Council wanted their input.

The Council decided not to refer the ordinance to the Board.

Chair Farber asked what exactly was being rezoned. Ms. Stearns said it was similar to a conditional use; it is a discrete rezoning for this particular site plan. It would not allow another Tier III tower to be constructed on this site; another tower would require another application for rezoning.

A public hearing was scheduled for September 8, 2014.

#### **Item 4     Order to approve a supplemental appropriation from Unassigned Fund Balance for Phase II renovations at Town Hall.**

Mr. Poore said Phase I was around \$350,000 and is nearing completion. Phase II includes insulation, siding, window replacement, carpet and flooring replacement, some architectural work to relocate the finance department in order to make room for an expanded food pantry, redesigning the clerk's area and creating a small office for assessing. The project went out to bid with the bid alternate and a 10% contingency. They are not including construction management on this project, but will rely on Town staff. He discussed the proposed furnishings budget: after a meeting with the Finance Committee tonight, they are reducing the proposed furnishings budget to \$25,000. The total proposed order would be \$601,360.00 instead of the \$646,360.00 posted to the agenda earlier today.

Public comment period opened; no public comment.

Mr. Poore thanked the Town staff for their work on this project to date. He said that the Council has had to invest in this building every 15 years or so, on average. Rent would average \$100,000/year; a project of slightly less than \$1 million every 15 years averages out to \$70-80,000 per year.

Councilor King moved the order for \$601,360.00; Councilor Hemphill seconded.

Motion carried 6-0.

**Item 5     Order to carry forward \$33,000 of unspent funding from the FY14 Street Line Painting line item, such funding to be used in FY 15.**

Public comment period opened; no public comment.

Councilor Hemphill wondered why the lines weren't painted; Mr. Poore said it was an issue of contractor availability.

Councilor Goldberg moved the order; Councilor McBrady seconded. Motion carried 6-0.

**Item 6     Discussion about future Council agendas.**

Mr. Poore discussed the upcoming agendas.

**Adjourn**

Councilor King moved to adjourn; Councilor Goldberg. Motion carried 6-0.

Meeting adjourned 9:55 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary