

Town Council Meeting Minutes November 24, 2014

Roll Call

Councilors McBrady, Mahoney, Goldberg, Farber, King, and Hemphill were present and answering roll call.

Councilor Anderson was absent.

Pledge of Allegiance

Chair Farber led those present in the Pledge of Allegiance.

Item 1 Public Forum

Dave Gagnon of Field Road thanked the Council for the approval of the 10 foot bridge for Riverpoint and spoke about the installation. The bridge will blend in without any need for paint, and he felt that it will last for 70-80 years with minimal upkeep. There is a video on YouTube of the installation.

**Item 2 (a) Order to approve the minutes of the October 15, 2014, Town Council
(Consent Agenda) Special Meeting.**

**Item 2 (b) Order to approve the minutes of the October 27, 2014, Town Council
(Consent Agenda) Meeting.**

Councilor King moved to approve the minutes; Councilor McBrady seconded.

Councilors King and Farber made amendments to the minutes. The amended minutes carried 6-0.

**Item 2 (c) Order to certify the November 4, 2014, Referendum Election results.
(Consent Agenda)**

Councilor Hemphill moved the order; Councilor King seconded. Motion carried 6-0.

Item 3 Report from Council Committees and liaisons regarding updates on assignments.

Councilor King said that LPAC and CDC recently held the second of their stakeholder meetings. More meetings will be coming up and will be announced soon.

Chair Farber said the Library is already at work on their fundraising. The ad-hoc Zoning Committee is working with a consultant on the administrative rewrite.

Councilor Goldberg announced that the Town received the Public Landowner of the Year award from IFW recently. He thanked the Bicycle Coalition of Maine for nominating the Town for this special recognition and he thanked LMAC for the hard work they do.

Councilor McBrady said the FEIC wanted everyone to remember that Shop Falmouth will take place on December 6; it encompasses more than just Route 1. There is an ad in the Forecaster with more information.

Item 4 Report from the Appointments Committee and order relative to filling various vacancies on Boards and Committees.

Councilor McBrady announced that there are openings on BAR, BZA, LMAC, PACPAC, Planning Board, FEIC, ad-hoc Zoning Committee, ad-hoc Connector Committee, and the ad-hoc Senior Citizen Advisory Committee. He urged people to apply to serve on a committee.

Item 5 Ordinance to amend the Zoning and Site Plan Review Ordinance to create a Hat Trick Drive Special District.

Councilor Goldberg moved the ordinance; Councilor McBrady seconded.

Town Manger Nathan Poore said all parties have now signed the Limited Development Agreement.

Councilor King acknowledged and spoke about the Planning Board's comments from their MRA hearing.

Motion carried 6-0.

Item 6 Presentation of a landowner's request to amend the Zoning and Site Plan Review Ordinance regarding dimensional requirements in the MUC district.

Councilor McBrady explained that the properties within the MUC district are to the south of the turnpike entrance; this includes parcels owned by David Libby, David Chase, and Joe Cooper, who has brought this proposal forward. The only other affected parcel is currently unbuilt. Mr. Cooper needs some changes to the zoning in order to improve his property and attract new tenants.

Tom Greer, of Pinkham and Greer, discussed the parcel and the surrounding area. The two buildings on the property were built in the 1980's. At that time the development was focused inward, so the buildings are oriented toward the circle in the center of the lot. They are trying to upgrade the buildings and rent them; their potential tenants all want to front Route 100 and increase parking along that side. The zoning on this parcel states that you cannot have any parking within the 50 foot front setback. This would eliminate most of the parking along that side of the building due to Route 100 being widened in order to build the bridge, and also due to the triangular section that was taken by the Turnpike Authority when they built the turnpike exit. That triangular section means that, instead of the property line ending at the right-of-way for Route 100, it ends at that DOT property and the setback is measured from there. They would like to change the ordinance to allow them to measure the setback from the centerline of the Route 100 right-of-way. The right-of-way for Route 100 is typically 60 feet, though it is wider in this section. He showed where the proposed setback would be if this change was made. He pointed out that the MUC district is very small; the proposed change would affect very few properties.

Councilor Mahoney pointed out that the Council amended this district before to allow for a drive-thru on this parcel. Chair Farber said that was correct.

Councilor Mahoney asked if the intention is not to have the drive-thru anymore, but to look at tenants like a store or office building.

Mr. Greer said the potential drive-thru restaurant tenant went away. They have had some interest from other high-quality tenants. He discussed the proposed drive aisle to access the front of the building. They are working with the Planning Board on that proposal. Their plans hinge on being able to provide for parking along that side.

Councilor Goldberg asked how the DOT triangle affects the setbacks.

Mr. Greer explained that the triangle was taken by the Turnpike Authority and then given to the DOT. They had a legal review to determine whether it was a separate parcel or a part of the right of way. The legal review was not definitive as to its status as a separate parcel, and DOT considers it part of the right of way. If the triangle was still part of the parcel, the 50 setback would be measured from the right of way of Route 100 and they would have room for parking. If the triangle is part of the right of way, the setback must be measured from that line. This puts the 50 foot setback within the building.

Councilor King asked the purpose of the triangle.

Mr. Greer thought the turnpike took all the land they thought they would need for turning lanes and such. This triangle was taken in case they wanted to put more of a radius on the exit. Once they built the interchange, they no longer needed it and gave it to DOT. Today it is an open grassy area. There is an easement across it for a water line.

Councilor King asked if it is part of the right of way.

Mr. Greer said they couldn't get a definitive answer from the legal review as to that. The Codes office considers it part of the right of way, and would measure the setback from that line.

Councilor Mahoney said the risk is if DOT chose to use that land in the future to redesign the interchange. In that case, they would have parking closer to the setback than would be normal. Otherwise, this amendment only allow the property owner to do what he would have been able to do anyway, if that parcel of land hadn't been taken.

Mr. Greer said that was correct.

Chair Farber said there is parking between the building and the grass. She asked how many spaces are there.

Mr. Greer said the original approved plan showed 5 parallel parking spaces there. It has since been turned into 8-9 diagonal spaces. Code enforcement has stated that those are not legal, so they have to go back to the approved spaces in order to be compliant.

Chair Farber asked how much parking is available on the interior of the site.

Joe Cooper, property owner, said there are about 15-20 spaces associated with that building, according to the original site plan.

Chair Farber asked how many spaces they would gain as a result of this change.

Mr. Greer said they are looking at putting 18 spaces on that side where 5 were approved. Instead of parallel spaces, they would have perpendicular spaces. It would also depend on the tenant.

Mr. Cooper explained that they are hung up. If they get the new drive aisle approved, they have to comply with the original site plan in regard to the 5 spaces. Any tenant that would benefit from the new drive aisle would need more than 5 spaces on that side. The type of tenant they want is not going to benefit from the parking on the other side.

Chair Farber pointed out that the area between the building and the lot line on the turnpike side is very narrow. Mr. Greer agreed; the edge of pavement in that area is within a few feet of the property line.

Chair Farber asked if that area was also taken by the turnpike; Mr. Greer didn't think so. He said there are a few parallel spaces along that side that are also not part of the approved plan and will have to be removed.

Chair Farber asked if this building has enough parking for a typical retail use according to the ordinance, if the amendment is not approved.

Mr. Greer said the current uses have enough parking in order to be compliant, according to the code. There are not dedicated parking spaces for each client, but it all works together. Tenants that want to locate there need to know that their customers will have an available space when they want it.

Councilor Hemphill asked about the traffic flow. Mr. Greer explained the proposed one way direction of traffic around the building.

Councilor King wondered if there was any way to get what they want from DOT; Councilor Mahoney didn't think there is.

Councilor King wondered if the MUC setback is different from the WFCMPD that abuts it. Mr. Greer didn't think so; he felt it was standard for the Town overall, except for the VC districts.

Chair Farber asked if this proposal would impact the other properties in the zone. Mr. Greer said it would give the Chase and Libby properties the ability to add parking in the front. The intent was to focus on those areas where the right of way was widened beyond what it would normally be. This amendment would allow for the setback to be located where it would be if the right of way hadn't been widened.

Chair Farber pointed out that the Route 100 committee is just getting started, and also that, if this parcel was on Route 1, parking would not be allowed in the front setback. In this proposal they are asking for more pavement between the building and the street.

Councilor McBrady didn't want to stall this project until the Route 100 committee is done with their work.

Councilor Hemphill understood the developer's concerns and felt the request was worthy of consideration.

Councilor King thought there was a lot of impervious surface on this parcel; she wondered if there was anything in the ordinance that would compel them to remove some of it if they are planning to add more on the Route 100 side.

Mr. Greer said there is an allowed percentage of lot coverage but he wasn't sure if there was one in this district.

The Council was interested in considering the proposal, and with staff spending time working with the developer on a proposed amendment.

Item 7 Discussion of special zoning amendments recently approved by the Town Council.

The Council discussed sunset provisions with Community Development Director Amanda Stearns. None of the amendments on the list developed by staff have a time limit associated with them. Ms. Stearns said they can sunset a zoning provision, but if it has been utilized by a property that property would become nonconforming in the future. The easier thing to do is repeal a provision. They could place a sunset on a provision such that, in the event the provision hadn't been used, it would go away.

Item 8 Presentation by the Land Management & Acquisition Committee (LMAC) and Forest Ecologist Andy Cutko, and Order to approve the 2015 Forest Harvesting Plans for Blackstrap Hill Community Forest and Woods Road Community Forest.

Ted Asherman, chair of the LMAC, discussed the history of the land management plans the Council approved in 2009. At that time, the Council required that any harvesting plans be brought back to them for approval before any harvesting was done. At the last meeting, the Council requested input from a forest ecologist, as well as input from the Conservation Commission. He explained that there will be a large educational component to the proposed harvesting operations, and they look at these as more wildlife management and not harvesting. He spoke about Andy Cutko, the forest ecologist, and discussed his credentials.

Chair Farber explained that the Conservation Commission reviewed the proposed harvesting plans for both the Blackstrap and Woods Road forests and concurred with the purpose and methods of the proposed wildlife habitat management activities to improve the overall health of the parcels.

Councilor King explained further that the Commission felt that some parcels should be left to natural disturbance only, while others, such as these, should be selectively managed for wildlife habitat.

Andy Cutko, forest ecologist, gave a presentation on conservation and forest ecology in general in Maine. Approximately 15% of Falmouth is conserved, and 10% of it is blocked from any timber harvesting. This is a high percentage for Southern Maine. He discussed the age of the forests in Southern Maine: 86% of the forest in this region is between 40-80 years old. This represents very little age diversity; the area is lacking both old forest and new forest. This is primarily due to farm abandonment. Ecological forestry is the process of identifying trees that will likely die within 20 years and taking those down, essentially mimicking the natural disturbance pattern. A lack of young forest, which provides habitat for several types of wildlife, is a concern in Southern Maine. Forest management can create uneven-aged structure and promote habitat diversity. Timber is a global commodity. Maine has a resilient landscape, and when the trees are cut down here, they grow back. There are areas in Maine that should be preserved, and those that are appropriate to be harvested. In terms of biodiversity, there are places in Maine he would rather see in timber production than other places around the world. He did a walk of the two properties in question tonight. His impression was that it was a good idea to set aside the 100 acres on Woods Road; it is an old stand, between 80-120 years old. The other stands do not have that older growth or unique values, and they would be appropriate places to do forest management. The removal plan seemed to be a fairly thoughtful plan. He suggested that it might be helpful to look at the Town overall, evaluate which areas are special and should remain untouched, and which areas are suitable for forest management. He thought an ecological inventory by a qualified person might be helpful in that case.

Public comment period opened.

Daniel Hildreth of Thornhurst Road liked the suggestion of an ecological inventory of all the parcels. He felt it was unfortunate to cut at Woods Road; it is a beautiful stand and there is already a lot of deer habitat in Town. He said there is a fringe of invasive plants at the transfer station, and he was concerned that it would spread if the canopy is opened there. He hoped the Council would reconsider the cut at Blackstrap, and if not, that they stay out of the ravines.

Sherry Huber of Blackstrap Road supported both the harvesting plans. Her husband was a forester that managed timberland for his family business. Her lands were harvested last winter; this is the second harvest she has carried out since her husband's death. She is also the executive director of the Maine Tree Foundation, a private, non-profit, environmental education organization, and she spoke of the Foundation's work. Their mission is to educate and advocate for the sustainable use of the forest and the

ecological, economic and social health of Maine's forest community. She felt the plans they are reviewing tonight meet their criteria.

Sally Stockwell, a resident of Cumberland, works at Maine Audubon as a wildlife biologist. She said it made sense to put the 100 acres on the Woods Road property as a no-cut area, but she thought they should think twice about creating deer browse in the other area; there is plenty of deer browse in the town. They are more in need of older stands with thick canopies to protect them during heavy winters. She said Maine Audubon has been working on a project to work with landowners on forest projects to benefit Maine birds. Maine provides important habitat for migratory birds. These birds like older forests, with more diverse structure. She thought Audubon could look at these plans and provide more perspective on wildlife management. She spoke about harvesting that was done in Cumberland; after that harvesting, there was a problem with invasives spreading.

Public comment period closed.

Councilor King asked the ecological benefits of not harvesting.

Mr. Cutko spoke about the benefits of old growth forests, and the lack of such in New England. Not managing a forest would allow them to create those age values.

Councilor McBrady wondered if part of the goal of harvesting was to remove low-value trees and create more high-value trees.

Mr. Cutko said anytime you are doing selective harvesting that includes selecting trees. It is often called an improvement cut, because you are improving the quality of the trees that are left. He understood that the plan is keeping some of everything that is there, just in different proportions. He spoke about the benefits of opening the canopy, as well as retaining some closed canopy stands.

Councilor McBrady was concerned about the risk of invasive species spreading.

Councilor Goldberg asked what a 40-80 year old stand will look like in 100 years, compared with a more age-diverse stand.

Mr. Cutko said an even-aged stand in 100 years might remain even-aged, but it will likely gravitate to becoming an uneven-aged stand. An uneven-aged stand will tend to remain that way.

Councilor Mahoney said all aged stands have positive and negative attributes. Mr. Cutko agreed; the state is wrestling with what the right balance is. Each type of stand provides habitat for different things.

Councilor Mahoney asked him to prioritize them for Southern Maine. Mr. Cutko said he would like more old stands and more young stands, to provide more balance against the middle aged stands. He wanted a wider age distribution.

Chair Farber said the plans set aside what is old growth for Falmouth, so those won't be cut.

Councilor Goldberg asked if the goal in removing some of the middle-aged trees was so that the other middle-aged trees would become old-growth.

Mr. Cutko said that many times after a cut, the remaining trees grow faster because they have access to more resources. The sacrifice is that the trees that are removed don't die and fall over. A good forester will take that into account and leave some to fall and provide that habitat for wildlife.

Councilor King asked about the value of the forest as a carbon sink. Mr. Cutko said that the impact of a harvest such as this is hard to identify.

Councilor Mahoney asked the difference between low-quality and low-value trees.

Paul Larrivee, Town Forester, clarified that the goal of the harvest at Woods Road is for wildlife management, as required by the Maine DEP. This is not about the timber. He explained that a low-value tree is one that's economic value is low. A low-quality tree is one that is damaged or diseased in some way.

Councilor Hemphill asked about the invasive species management. Mr. Larrivee said the committee has done a lot of work to identify and work on controlling invasive species on these parcels.

Chair Farber asked about preventing the spread of those species, such as a tree barricade. Mr. Larrivee said it made sense to identify those areas and work around them.

Councilor Hemphill said isolating the area with a buffer won't do a lot; they need to eliminate the source of the seeds. Managing and monitoring these sites in the future will be helpful.

Councilor King thought they should identify what their overall goals are in ownership of these woodlands.

The Council addressed the Woods Road parcel first.

Councilor Mahoney pointed out that they have obligations to DEP and IFW that they are required to fulfill on this parcel. He didn't think they had many options here, and he appreciated the work that Mr. Larrivee and Bob Shafto made in their negotiations with DEP. Chair Farber agreed. Councilor Hemphill thought the Woods Road parcel could serve as a demonstration project, as long as they manage for invasive species and are careful about wetlands. Councilor King agreed. Councilor Goldberg said the money the Town will receive from this is a by-product.

Councilor Mahoney moved to approve the Woods Road harvest plan; Councilor Goldberg seconded. Motion carried 6-0.

The Council discussed the Blackstrap parcel.

Chair Farber thought staying out of the ravines was part of the plan; Mr. Larrivee said it is.

Councilor Mahoney said the impression from reading the management plan was that the goal is to end up with high-quality saw logs. That isn't their focus, nor should it be. He wasn't sure they were ready for this; he wondered if they have done the necessary ecological surveying on all the Town parcels. He felt they should have that before they do any other harvesting plans. Councilor McBrady agreed.

Councilor Hemphill wondered why they need that now, when they have a well thought-out program before them. This plan is conservative, limited, and is geared toward improving the health of this stand. He didn't see the value in pausing.

Councilor King felt they would be looking to gain clarity of vision.

Chair Farber didn't think the community had a clear vision of what they mean by stewardship of the forests. She thought an ecological inventory would be helpful overall. She supported the Blackstrap plan. She felt they are missing a common direction and vision around forest stewardship.

Councilor Goldberg felt they got the opinion from an expert today that this plan is okay, and he felt they should listen to that expertise.

Councilor Hemphill moved to approve the Blackstrap harvesting plan; Councilor Goldberg seconded. Motion failed 3-3 (McBrady, Mahoney, King opposed).

The Council was interested in a ecological survey and inventory of the Town and asked LMAC and staff to work on that.

Mr. Cutko spoke about what those might look like. He encouraged them to also discuss what their priorities should be for their open space.

Item 9 Discussion about open space easements held by the Town and the Falmouth Land Trust.

Chair Farber thanked LMAC for the report.

Item 10 Order to authorize the Town Manager to execute a License Agreement with the Falmouth Land Trust to use space at the Mason-Motz facility.

Public comment period opened; no public comment.

Councilor Mahoney moved the order; Councilor King seconded. Motion carried 6-0.

Item 11 Introduction of an amendment to the Code of Ordinances Section 17-9 *Certain Vehicles Prohibited from Certain Streets*, which restricts trucks on Brook Road.

Councilor Hemphill explained that the Council has been approached by residents of Brook Road about their concerns surrounding an existing ordinance that prohibits trucks from a stretch of Brook Road. The Town has the authority to regulate traffic on the section between Mountain and Leighton roads. The proposed amendment will clarify the restrictions on truck traffic on Brook Road.

Councilor McBrady asked for clarification that this would not restrict truck traffic on Leighton; Mr. Poore said that is correct, though he has had residents of Leighton express interest.

Councilor King wondered what kind of trucks they are looking to restrict.

Councilor Mahoney felt the issue was box trucks and larger. That would be classification 5 and greater.

The Council discussed what type of trucks would be restricted. The Council agreed with starting with class 6, instead of 5.

Chair Farber wondered about people who might own one of these trucks and want to park it on their property; Mr. Poore said he would research that.

A public hearing was scheduled for January 12, 2015.

Adjourn

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

Meeting adjourned 10:00 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary