

Town Council Meeting Minutes January 12, 2015

The meeting was called to order at 4:30 pm.

Roll Call

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

Councilor Mahoney arrived late.

Item 1 Order to go into Executive Session pursuant to the Laws of Maine to discuss legal rights and duties with the Town's attorney, pursuant to 1 M.R.S.A. § 405 (6) (E).

Councilor Anderson moved to enter executive session; Councilor King seconded. Motion carried 6-0.

The Council left executive session at 5:00pm.

Item 2 Conversation on affordable housing in Falmouth with invited guests. (Workshop)

Town staff and invited guests John Gallagher (MaineHousing), Godfrey Wood (Habitat for Humanity of Greater Portland), and Nathan Szanton (The Szanton Group) gave presentations to the Council. This was followed by a question and answer session with Town Councilors.

The Council took a recess from 6:40-7:00 pm.

Item 3 Introduction to adopt the maximum levels of income and expenses for the General Assistance program, Chapter 6, Article 6, Section 6.68, Appendices B & C of the Falmouth Town Ordinance.

Chair Farber explained that these maximums are issued by the State of Maine, and that they are required to pass these amendments.

A public hearing was scheduled for February 9.

Item 4 Public Hearing on an amendment to the Code of Ordinances Section 17-9 *Certain Vehicles Prohibited from Certain Streets*, which restricts trucks on Brook Road.

Chair Farber gave a brief history of the amendment and opened the public hearing.

Dick Dudley of Brook Road has lived there since 1979, when the original ordinance was passed. Back then this was a quiet residential street. When Verizon built their facility on Davis Farm Road in the 1970's their utility trucks began using Brook Road, and other trucks began to follow suit. That was why the ordinance was passed. He didn't think this amendment was what people were looking for, but he supported it.

David Murdoch of Brook Road said that, while he previously suggested limiting trucks on a section of Brook Road, he now felt they should limit the whole length. He said Leighton and Brook are cared for and maintained by the Town. The DOT has a process to restrict truck traffic on collector roads. He felt

the requirements of this process have already been met. There are three main east-west routes that trucks can use. The suggested amendment would restrict Class 6 trucks and higher; he argued that their issues are with Class 5 trucks. This restriction would not interfere with commerce in any way; Washington Ave is a suitable alternative.

John Serber of Brook Road has lived in the neighborhood since 1952. He was concerned with pedestrian safety in the area. Vehicles drive very fast down the road, including the big trucks. He said there are a number of small children that live in the neighborhood.

Chair Farber closed the public hearing.

Councilor Mahoney wondered how they address the stated concern with Class 5 trucks. They don't want to limit recreational vehicles and heavy-duty pickup trucks, but those are Class 5.

Councilor Anderson pointed out that Portland classifies trucks by gross vehicle weight instead of this classification list. He wondered if they can follow that system instead. It would be consistent with a neighboring community.

Chair Farber thought it is difficult to estimate the weight of a vehicle as it goes past; identifying a classification is much easier from an enforcement perspective.

Councilor Hemphill drove Brook Road recently and witnessed a truck using the road as a conductor from one place to another. He looked at the sign on Washington Ave that limits trucks and said anything above a heavy-duty pickup truck would be excluded with a 9000lb weight limit. He wasn't sure how effective those signs are in Portland and whether they keep people out. He said the gross vehicle weight limit would capture many of the heavy trucks that the class 6 limit would not.

Councilor McBrady said the people driving the trucks know the weight of their trucks and he recommended the limit be based on gross vehicle weight.

Councilor King wondered about notifying those businesses on Davis Road that the residents would prefer they use the Washington Ave route. She wondered how many trucks of what size use the road.

Councilor Goldberg said the goal is to make the road safer. He thought the issue was a combination of truck size and speed. He wanted to make sure whatever they do solves the stated problem.

Chair Farber suggested that they change the amendment to Class 5 and higher. She wanted to make sure there is a way for a resident who owns a large truck to bring that vehicle onto their property.

Councilor Goldberg wondered if they would be allowed to split a class, limiting all of Class 6 and box trucks, which are in Class 5.

Councilor Anderson suggested an amendment to the ordinance language to prohibit trucks Class 5 or higher, with an allowance for residents of the neighborhood to bring their personal vehicles on to their property. Councilor Mahoney agreed.

Chair Farber felt they needed DOT's permission to do this; while there is a process, she didn't think DOT has granted any of these before. If there are going to have an ordinance, they should be ready and able to enforce it.

Councilor Mahoney felt the Town should approach MDOT and ask for consistency in how Brook Road is treated in its entirety. Until then, they can limit the section between Leighton and Mountain.

Councilor King wondered if the DOT restriction was in effect when the restriction was put into place. The signs have been up for over 30 years.

Chair Farber said that becomes moot once they know they can't enforce it. She didn't think they should extend the ordinance to cover a section of the road over which they know they do not have jurisdiction.

The order was scheduled for January 26.

Item 5 Presentation by the Recycling and Energy Advisory Committee (REAC) of their report on potential regulation of plastic shopping bags.

John Haley of Mast Road, chair of REAC, gave a presentation on the work the committee has done to research the issue of plastic shopping bags in Falmouth and offer a recommendation to the Council. Based on their research, they estimate that over 2 million plastic bags are given out each year in Falmouth by the three largest stores alone. He spoke about the effect of plastic bags on the ocean; plastic breaks down in the sun and can be ingested by fish. These bags are also a source of litter in Falmouth: they clog up drains and culverts, and cause problems at ecomaine's recycling facility. The committee polled local residents, held a meeting for local businesses, and spoke with local organizations. They also spoke with communities in Massachusetts who have passed ordinances pertaining to plastic bags. Their survey revealed support for the use of reusable bags. The committee recommends a phase-in approach for regulating the use of plastic shopping bags: they suggest implementing a 5 cent fee on both paper and plastic bags in the first year, along with instituting a education program for the public, with a complete ban to be implemented in year two.

Councilor Anderson suggested the ordinance committee take this recommendation from here, reaching out more to the public and local businesses.

Councilor King felt the survey showed an interest on the part of the public to reduce or ban plastic bag use. She agreed that more input from businesses would be helpful.

Councilor Mahoney said he was startled at the number of plastic bags that are handed out each year. The impact on ecomaine is a real incentive for them to address this. He agreed they should do more on this, but hoped they could move forward quickly.

Councilor Goldberg wondered why paper bags are included with this.

Mr. Haley said that paper bags actually cost the businesses more money to buy. If there is a fee on plastic but not paper, people will use more paper and that will pass the cost onto the retailer. There is an environmental cost to paper bags as well.

Chair Farber thought ecomaine accepts and recycles plastic bags. She wondered why ecomaine is having a problem.

Councilor King said the bags are so lightweight that they don't go where they are intended. They fly around and jam up the machines. While the bags say they can be recycled, they are a pain and the sale price for them is very low. They are not worth the trouble.

Councilor Anderson felt they were accepted as convenience for the user, but they do not benefit ecomaine.

Councilor Goldberg asked about the rationale behind the exceptions that are proposed.

Mr. Haley said an exception they have discussed is the plastic bags the store provides for the customer to put their meat into, which is a safety issue. Another exception was for the bags dry cleaners use. They marked both of those for further research, but their inclination was to have few exceptions.

Councilor Goldberg asked if there was any data as to how these bags get out into the environment. He asked if commercial dumpsters are the culprit and whether requiring dumpsters to be covered would solve some of the problem.

Mr. Haley felt there were several pathways for these bags to get loose. That idea might solve some of the problem, but he felt this ban would be a big solution to solve many problems.

Councilor Hemphill asked if the committee discussed ways to improve the use of reusable bags.

Mr. Haley said they have talked about it.

Kim Darling, Energy and Sustainability Coordinator, said they have discussed potential solutions, including the Town purchasing bags with the town logo. They have placed this issue on their work plan for the upcoming year.

Councilor Anderson pointed out that the per-bag fee in the first year could finance a lot of reusable bags for Town residents.

The consensus of the Council was to send the item to the ordinance committee.

Item 6 Introduction of proposed amendments to the Zoning and Site Plan Review Ordinance, the Tidewater Village Design Guidelines, and the Tidewater Master Plan in order to accommodate development on property known as TV-4, located at the intersection of Farm Gate Road and Clearwater Drive.

Mike Hays, of Grant Hays Associates, presented the changes that have been made to the proposal since the last meeting. The proposed footprint building has been reduced from 45x100 ft. to 40x100 ft. They have considered the comments made by the Council at the last meeting, and have met with the residents of Farm Gate to hear their concerns. The developer has arranged for additional off-site parking commitments beyond the leased spaces at TV-3, and has asked for additional guidance on parking from Planning Staff. They considered the Council's request to rezone the property to VC; after reviewing it with the developers and Planning staff, they determined it would be easier to move forward with the request to amend the existing zone. With the footprint change, the above-grade square footage would be less than the maximum of 8,000 sq. They are asking that the below-grade basement not be included in the calculated square footage, since it does not contribute to the massing of the building. Moving the entrance to Hat Trick Drive removes traffic from the residential roads. He explained the new parking arrangements: there are 24 spaces on the lot, 20 spaces are leased from TV-3, 10 spaces will be available at Foreside Place, and 8 spaces on the Family Ice lot; that brings them to 62 spaces total. Based on an estimated 192 seating capacity, the ordinance would require them to have 64 spaces. He argued that expanding the radius from the current 500 feet to the requested 1300 feet would provide them with more than the required number of spaces, especially since their busiest times of day would be after office hours. He discussed the proposed amendments to the Tidewater Master Plan.

At Councilor Mahoney and Councilor Goldberg's request, Mr. Hays identified all the proposed off-site parking spaces on the map.

Councilor Mahoney asked the details about the proposed leases for spaces at TV-3 and Foreside Place.

Steve Doten, property owner, explained that the 20 spaces at TV-3 are year-round, permanent spaces. That is the only lease they have. They are still discussing the spaces at Foreside Place, but the owners of that property have indicated that they are agreeable.

Chair Farber said the ordinance would require 64 spaces for the 192 seating occupancy. She asked if they are still requesting extending the radius to 1300 feet.

Mr. Hays said that, if their negotiations are successful, they might be able to meet their parking requirements within the 500 feet but they don't want to remove their request to expand the radius if they can't meet the requirements within the 500 feet.

Chair Farber asked if there are currently any striped parking spaces on Clearwater. Mr. Hays said there are along the front of TV-2 and TV-3.

Chair Farber asked if there is room for parking on Clearwater between this lot and Route 1.

Councilor Goldberg asked if there would be parking along Hat Trick once it is built out; Mr. Poore said there will be perpendicular spaces along Hat Trick. There was some preliminary planning for parking along Clearwater as part of the Route 1 planning, but it was removed. He felt there might be room for them.

Councilor King asked if they can count public spaces along the road toward their required number of spaces. Chair Farber thought the Planning Board could.

Mr. Hays confirmed with Planning staff that the Planning Board would make that determination.

Mr. Hays presented the proposed elevations of the building and discussed the floor plans. The first and second floors would come to approximately 7336 gross sq. feet.

Councilor Mahoney asked if “outdoor seating” and “restaurant use” were separate uses and could be treated separately.

Chair Farber said they are listed separately in the list of permitted uses in the Tidewater Master Plan.

Councilor King asked about their decision to reduce the size of the building.

Mr. Hays said that, after their meeting with residents from Tidewater, they looked at how they could reduce the number and scope of their requests for amendments. Reducing the size of the building brings it into compliance with the size of the building approved for the property in 2008.

Councilor King asked if their seating capacity has remained the same; Mr. Hays said it may be less, but they decided to plan for the highest number. The Planning Board will review that number.

Councilor Hemphill asked how they have addressed neighbor concerns related to noise, visual impact, and parking impact within the neighborhood.

Mr. Hays said the dumpster has to be properly screened anyway; they are aware that they will need to provide for significant buffering between them and the neighborhood. They will address noise and odor at the Planning Board. They will have music outside on the patio in season, but it will be dinner music and not loud enough to impede conversation. They will have to use great filters on their exhaust fan system to mitigate odor. He said by providing all the parking in the immediate area, that will reduce parking on Farm Gate. They can't go out and prevent people from parking there, but they can identify to their patrons where their parking is.

Chair Farber was interested in instituting some kind of limitation on parking on Farm Gate if this moves forward.

Councilor McBrady was concerned about the impact on the residents of the neighborhood.

Councilor Mahoney asked about the outdoor seating area, and if there would be limitation on the hours that it would be used.

Lance Meader, owner of Rivalries, agreed that they could do that. They have a similar outdoor space at their current location. Summer is their slowest time of the year and the outdoor area is a draw for customers. They have located it on the far side of the building from the neighborhood, and it isn't very large. It is used mostly during daytime hours; they find that it isn't used much in the evening even in the summer. He didn't think the noise would be an issue. He said the smell wouldn't carry very far and he pointed out that the zoning on adjacent properties allows for restaurant use.

Councilor King asked about the proposed hours for the restaurant.

Mr. Meader said the hours in the proposal are based on the hours for their current restaurant in Portland. He felt that they would likely close earlier in Falmouth. He explained that they would not kick people out of the building if they had paid for their meal. Their busiest hours are earlier, even in their location in the Old Port.

Councilor King asked if it becomes a bar after the kitchen closes.

Mr. Meader said he didn't think they would be open that late; they are required by the state to serve food as long as they are open.

Chair Farber thought they amended the ordinance about outdoor performance of music, requiring a notice to residents. She asked if this would qualify under that ordinance.

Mr. Poore said he could research the special amusement permit.

A public hearing was scheduled for February 9.

Item 7 Discussion about future Council agendas.

Mr. Poore discussed the items scheduled for upcoming council agendas.

Adjourn

Councilor Mahoney moved to adjourn; Councilor Hemphill seconded. Motion carried 7-0.

Meeting adjourned at 9:02 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary