

**Town Council Meeting  
March 9, 2015  
Minutes**

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

**Roll Call**

All Councilors were present and answering roll call.

Councilor Goldberg moved to amend the agenda and take item 8 after item 4, in order to accommodate the applicant. Councilor Mahoney seconded. Motion carried 7-0.

**Item 1            Public Hearing on proposed amendments to the Tidewater Master Plan Development District and the Tidewater Village Design Guidelines in order to accommodate development at TV-3.**

Chair Farber opened the public hearing.

Nathan Bateman of Tidewater LLC said the application is pretty straightforward.

Elizabeth Andrews of Heron Point Road, a board member of the Tidewater HOA, spoke on her own behalf and not as a member of the board. She supported the proposed amendments. These changes appear minor and will allow the plan to finally be built out as intended.

Clifford Gilpin of Heron Point Road, a member of the Tidewater HOA, agreed with Ms. Andrews. The HOA supported the proposed amendments, which are in line with what was originally envisioned for the master plan. They feel the original master plan is still valid and should be honored. The HOA met with Mr. Bateman in December; they would like to have a follow up conversation to review the proposal and see how it has changed since then.

Chair Farber closed the public hearing.

Councilor King thought the amendment as currently written would allow three 11,000 sf buildings; even though what is being proposed doesn't amount to that, she thought the amendment ought to reflect something closer to what they want to see there. If it passes as it is, she wondered about the impact to the lot of three buildings that large.

Amanda Stearns, Community Development Director, agreed that the amendment would allow up to 3 11,000 sf buildings.

Mr. Bateman said he has discussed the matter with Senior Planner Ethan Croce; they are only looking for one building to be that size; the other two buildings would be 4,000 sf. They have another limitation that they cannot reduce the green space on the lot by 5%; this would limit how much they could build on the lot. He would be happy to amend the language to allow one building at 11,000 sf, and limit the other two to 4,000 sf with an allowance for a connector between the two for a stairway/elevator.

Councilor Anderson asked about the reduction to the required percentage of retail.

Mr. Bateman said they were reducing the required amount of retail from 45% to 27%, to reflect that the 11,000 sf building will have no retail on the first floor. The 27% will mean all the first floor space in buildings 2 & 3 will be retail. They have not had any luck locating retail so far.

Ms. Stearns thought it would be helpful to be very clear as to what they are limiting with regards to footprints and gross floor area. They have a 3.5 story height allowance. The current master plan calls for looking at the total first floor area of both TV-2 and TV-3; at least 45% of that space must be retail

according to the current master plan. Development of TV-2 as 100% office space pushed the burden of meeting that requirement all onto TV-3. Making the proposed change would mean that TV-2 would not have any requirement for retail space.

Councilor King thought the amendment reflects the current development plan, but wondered if it would be conceptual enough to allow changes made during the following approval process.

The Council asked staff to draft language to address the question of the square footage of the buildings.

**Item 2                    Public Hearing on a proposed amendment to the Zoning and Site Plan Review Ordinance section 3.18.11, in order to extend the Tidewater Master Plan Development District an additional six months.**

Chair Farber opened the public hearing.

Clifford Gilpin, of Heron Point Road, said the HOA supports this extension. Tidewater is a special place and the residents want to contribute to a thoughtful process on how they move forward.

Bob Isler of Farm Gate Road, asked about the recommendation of the Planning Board at their MRA hearing. Chair Farber stated that the Planning Board's recommendations are attached to the Council's online packet and are part of the record.

Chair Farber closed the public hearing.

Chair Farber asked what the next step would be in the case this passes. She asked Councilor Mahoney and Councilor Hemphill to work with the applicant to draft a process for reviewing the Master Plan for the Council to consider at the next meeting.

Councilor Anderson wondered if this should go to the CDC instead. Chair Farber felt that CDC would have to stop everything else they are doing to meet the 6 month timeframe. Councilor Goldberg agreed that the CDC will have to review it at some point but this might help streamline the process for them.

**Item 3                    Ordinance to amend 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.**

Chair Farber had some changes to the proposed ordinance language. She wanted to remove the allowance for the outdoor dining area, in recognition of the opposition of the neighborhood. She said the applicants could come back for it later, and she didn't feel it was necessary to have it now. She wanted to add language making it clear that public use of the basement would not be allowed. She proposed that they not limit the building orientation to Hat Trick Drive; if they wanted to reorient the building in the future, they shouldn't have to come back to the Council to change it back to face Clearwater.

Councilor King asked for further clarification on removing the outdoor dining area; Chair Farber said it would reduce the total number of seats, and it would break down the development of the restaurant into steps. The applicants could come back for approval of that area later.

Councilor Anderson felt the proposed changes were thoughtful. The neighborhood has expressed concerns with noise and its impact on the area. He worried that removing the outdoor dining would jeopardize the success of the business. He wondered if they could restrict the area of outdoor dining to as far away from the neighborhood as possible.

Councilor Goldberg thought the concerns with the outdoor dining were more about music. He didn't think removing the tables would impact the business. He wondered about limiting the ability for them to have music.

Councilor Mahoney felt it was more appropriate for the Planning Board to address this issue. Councilor King wondered if the Board could determine that outdoor dining was unsuitable for the site, if they left it in. Chair Farber felt the Board could evaluate it based on parking, lighting and buffering.

Ms. Stearns said if a use is permitted, the Board has the capability of placing conditions that may influence how the use is allowed, but would not have the authority to determine whether it is a good use for the property. The number of seats, location, music; those would be under the Board's authority to place conditions on. There is no proscribed parking on outdoor dining; this is where the Board's authority to review the site comes in. They would likely ask for a study to evaluate the parking for the whole site and then determine what the allowable number of seats would be.

Councilor Anderson moved the ordinance; Councilor Goldberg seconded.

Chair Farber moved to amend the ordinance, eliminating the language changing the parking radius to 1300 square feet, adding "public access is prohibited in basement areas" to the Design Guidelines Section C4.01 *Permitted Uses*, and adding "Farm Gate Road, Clearwater Drive or.." to the Design Guidelines Section C4.04 *Visual Orientation of the Design Guidelines*. Councilor Anderson seconded.

Motion carried 7-0.

Amended ordinance carried 7-0.

**Item 4            Public Hearing on a proposed amendment to the Code of Ordinances to provide an exemption from vehicle excise tax to eligible active duty military personnel.**

Chair Farber opened the public hearing; no public comment.

An order was scheduled for March 23.

**Item 8            Discussion of an application for acceptance of Brookfield Road.**

Fred Chase, applicant, asked if the Council would accept the extension of Brookfield Road as built, if it meets the requirements. If the Town accepts it, he asked if they would accept the paper street in order to create connectivity in the future. He said the project includes 900 feet of road, 4 house lots, 18 acres of open space, and a circle at the end of the road. They are proposing to give the Town the 18 acres of open space along with the right of way and the paper street.

Jay Reynolds, Public Works Director, said they have been reviewing the street against the Town's acceptance standards. A portion of Brookfield Road is a public street, up to the location where the subdivision begins. Currently, there is no place for the plows to turn around at the end of the public section of Brookfield.

Chair Farber asked how they ended up with a private extension of a public road. Mr. Reynolds said one portion was developed years ago, and Mr. Chase developed the end of it later. At Chair Farber's request, Mr. Reynolds indicated the location of the paper street.

Councilor Anderson asked if there was a trail from the cul-de-sac to the river; Mr. Chase said that was correct. Councilor Anderson wondered if making this a public street would allow public access to the river. Mr. Reynolds said if the Town took the open space, they could.

Councilor Mahoney asked about parking; Mr. Chase said they couldn't park on the cul-de-sac, but they could park on the straight section of the road. They could also park on the open space in the summer.

Councilor King asked if the open space was contiguous with other open space. Mr. Chase said it isn't, but it goes all the way to the river. There is a trail along the river that connects with other trails. There is 1000 feet of river frontage.

Councilor Goldberg said the paper street runs to a piece of private property that abuts Blackstrap Road. Mr. Chase said that is correct. It is a vacant lot that used to be a gravel pit. It would have room for a couple of houses.

Councilor King said that, looking at the criteria, she didn't see connectivity.

Mr. Chase said he has provided as much connectivity as he can; he doesn't own the land that abuts Blackstrap. He said the cul-de-sac allows for plows, school busses and garbage trucks to turn around and come back down the road instead of backing up and turning around.

Chair Farber asked if he was asking the Town to purchase the open space; Mr. Chase said he would give the Town the fee simple to the open space. They can't do anything on it without approval from the Town, so they felt it would be easier for the Town to own it.

Councilor Hemphill thought LMAC would need to look at the property. He asked if there was any indication of development of the private parcel at the end of the paper street. Mr. Chase said he didn't know who owns it.

Councilor Anderson said taking this road would make it easier for the plow trucks and school busses, and would allow the Town to acquire the open space at no cost. The paper street would provide future connectivity. He supported the application.

Councilor Hemphill didn't see a connectivity issue; there are paper streets everywhere. There are no guarantees that it will ever connect. He thought it was a good idea, in light of making it easier for the plows.

Councilor Mahoney wondered about extending access from River Point. He felt they should move forward with the application.

Councilor King wondered why they are trying to demonstrate connectivity; Councilor Mahoney said it is required under the policy for street acceptance.

Councilor Mahoney suggested Mr. Chase sit down with LMAC to discuss the trails and open space piece. The Council agreed.

**Item 5            Order to authorize a Supplemental Appropriation and transfer of \$300,000 from the Unassigned Fund Balance for architectural services related to the Library expansion and renovation project.**

Marsha Clark, of the Library Board of Trustees, spoke about the RFP process. They received 3 responses to the RFP from three very highly qualified firms. They interviewed all three firms and, after lengthy discussions, the committee unanimously agreed to hire Scott Simons Architects. The cost for all the work comes to \$500,000 and covers schematic design all the way through a year after construction. Their costs for the preconstruction part of the costs come to \$300,000. They made it clear with the architects that the design can't get ahead of the fundraising. They will be using a construction manager and the Library will bear that expense.

Chair Farber clarified that this appropriation would provide for the Library to get started with preconstruction work; if the project does not go forward, the Library and Town would split this cost.

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

Councilor Anderson clarified that while they are advancing these funds, this is part of the Town's overall commitment, and not in addition to that.

Councilor Goldberg moved the order; Councilor Hemphill seconded. Motion carried 7-0.

**Item 6                    Ordinance to amend the Code of Ordinances, Div. II-2-3-5. *Conservation Commission* in order to update the charge of the Conservation Commission.**

Councilor Mahoney moved the ordinance; Councilor Hemphill seconded. Motion carried 7-0.

Chair Farber moved to amend the agenda, taking item 9 out of order; Councilor King seconded. Motion carried 7-0.

**Item 9                    Discussion of on-street parking restrictions on Farm Gate Road.**

Chair Farber said there have been a number of parking concerns expressed by residents of the neighborhood during discussions around development of Tidewater Village. She wondered if the Council would consider public parking in designated areas/spaces only. This would allow Town staff and the neighborhood organization to discuss where parking would make sense.

The Council was in favor of considering the proposal. The consensus of the Council was to send it to the Ordinance Committee.

**Item 7                    Public hearing and order regarding the proposed designation of a certain Municipal Development and Ocean View / Natural Gas Tax Increment Financing District and a related Development Program.**

Chair Farber opened the public hearing; there was no public comment.

Councilor Mahoney acknowledged an email the Council received from a member of the public who couldn't be at the meeting.

Town Manager Nathan Poore discussed a projected Capital Improvement Plan (CIP) staff prepared, incorporating the new TIF district. There is a buildup of the TIF for the first few years. The projection showed a reduction in the mil rate for the first few years of the TIF. He discussed the changes they made to the CIP in the projection, moving some projects to both the new TIF and the existing two Route 1 TIFs. The proposed TIF helps the CIP and shows an initial reduction of the mil rate on both the capital side and the operating side. He said that Jim Saffian submitted some of the draft documents to DECD last week and they had some minor comments on the project list.

Councilor Anderson said the project list doesn't have to add up to or balance out to the amount of the TIF. He agreed that the infrastructure projects are appropriate, but keeping some of the projects on the list might send a message to future councils that this Council has given more consideration to them than they have. They are seeing some of these projects for the first time. They need to be specific enough to meet the needs of the State, but the more specific they get on how they want to spend this money over 30 years, they less flexibility they will have. He felt they should go with a shorter list of projects.

Councilor King asked how they justify the amount they capture in the TIF if they don't have projects that total to that amount. Mr. Poore said that, as they go, they would audit what they are spending money on. If they didn't have eligible projects they wanted to spend the money on, they could then discuss how much value they wanted to capture.

Chair Farber said they could amend the TIF as well. Mr. Poore said it would be surprising if they didn't amend it; they have amended the other TIFs in town several times.

Councilor Mahoney wondered if there was a way to word the order to identify those projects that have merit but that he didn't want to be binding.

Jim Saffian of Pierce Atwood said they are limited by what is in the document, but not bound by what is in it. The only way to put their opinions on the projects in the record is in the minutes of the public hearing. It didn't seem likely that a separate vote or resolution would be of help.

Councilor Hemphill felt that future councils would be savvy enough to determine whether a project had merit and was appropriate. He was inclined to include a larger list. He wondered if there was an impact on the mil rate of including the larger list.

Mr. Poore said no, it doesn't have to impact the mil rate. It becomes a cash flow management process. As the project ramps up, the amount in the account goes up and their ability to do projects increases. They won't have the ability to do some of these projects in the short term.

Councilor Goldberg wondered why they would take options away if they can build flexibility into it. Councilor Anderson felt they would have more flexibility with a shorter list, if newer or better ideas come up 15 years from now.

Councilor Goldberg thought they would be sheltering less value if they did that; Councilor Anderson said that wasn't what he was suggesting. He suggested including projects 1-13, 15, 16, 17, 19, and 23.

Councilor King didn't understand the down side of having a longer list.

Chair Farber had trust in future councils to have ideas for projects that might be eligible to use TIF funds. She didn't feel they would be bound by this list. A council still has to make a proactive appropriation decision with a TIF. The longer list might prevent them from having to seek an amendment.

Councilor Anderson moved to amend the development program by amending Exhibit G, eliminating items 14, 18, 20, 21, and 22 from the project list. Councilor McBrady seconded.

At Councilor King's request, Councilor Anderson explained that he felt these projects are neither infrastructure projects nor are related to economic development.

Motion failed 2-5 (Mahoney, Goldberg, Farber, King, Hemphill).

Councilor Mahoney moved to adopt Order 84-2015; Councilor Goldberg seconded.

Councilor Anderson wondered how the Council reviews and approves projects for TIF expenditures.

Mr. Poore said he is starting to look at the TIF districts and the CIP together, reviewing them as part of the budget process each year. The Council will then approve spending as part of that process.

Councilor Anderson wondered about approval of a project that came up outside of the budget process. Mr. Poore said if it was in the development plan, it would come back to the Council for approval. If it was not in the plan, they would have to go back to the DECD for an amendment. That process would be the same as the current process, requiring Council approval of the application first. He said the Council could also draft a formalized policy on how the Town manages the TIFs.

Motion carried 7-0.

**Adjourn**

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

Meeting adjourned at 9:36 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary