

Town Council Meeting Minutes October 26, 2015

The meeting was called to order at 6:00 pm.

Roll Call

All Councilors were present and answering roll call.

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

Councilor Farber moved the order; Councilor King seconded. Motion carried 7-0.

The Council returned from executive session at 7:00 pm.

Pledge of Allegiance

Chair Goldberg led those present in the Pledge of Allegiance.

Item 2 Public Forum

George Lydick, a resident and business owner of the Falmouth McDonalds, thanked Jay Reynolds for his coordination of the Route 1 project. Mr. Reynolds did a great job.

Item 3 (a) Order to approve the minutes of the September 16, 2015, Town Council (Consent Agenda) Special Meeting.

Item 3 (b) Order to approve the minutes of the September 28, 2015, Town Council (Consent Agenda) Meeting.

Item 3 (c) Order to appoint Councilor Farber as the council liaison to the Library (Consent Agenda) Board of Trustees, and to appoint Councilor Kitchel as the council liaison to the Tercentennial Committee.

Councilor King moved the consent agenda; Councilor Hemphill seconded.

Councilor Farber made an amendment to the September 16 minutes. Councilor King seconded. Amendment carried 7-0.

Consent agenda carried 7-0.

Item 4 Report from Council Committees and liaisons regarding updates on assignments.

Councilor King said the Harbor Committee met last week; they had a good summer at Town Landing. They were pleased about the grants for the boat and the floats. They were discussing dinghy space, which is very tight. There are 5 town dinghies; that program has been a success. She also reported that LMAC tackled invasive species on Town owned properties in September.

Councilor McBrady urged members of the public to apply to the Route 1 North committee.

Councilor Anderson said the Ordinance Committee will meet tomorrow to discuss the plastic bag ordinance and hopefully finalize their recommendations.

Councilor Farber reported that the transfer station can now accept and recycle old paint, and can take compost.

Item 5 Report from the Appointments Committee and order relative to filling various vacancies on Boards and Committees

There was no report.

Item 6 Public hearing on an amendment to the Zoning Map to rezone the property located at 9 Lunt Road from RA to VCC.

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

An order was scheduled for November 9.

Item 7 Public hearing on amendments to the Zoning and Site Plan Review Ordinance to revise the Retirement Community Overlay District's (RCOD) conceptual master plan, and to amend the Zoning Map to extend the RCOD to include the properties at 170, 172, and 174 Middle Road.

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

An order was scheduled for November 9.

Item 8 Public Forum on a possible Affordable Senior Housing Project at the former Plummer School by OceanView and the potential role of the Town in that project.

Theo Holtwijk, Director of Long-range Planning, gave a brief presentation on the proposed addition to the Plummer School. The smaller addition has 28 units, and would generate about \$81,000 in taxes. The larger addition would have 34 units and would generate an additional \$17,556 in taxes. He discussed the proposed affordable housing TIF. Staff estimated that, over the 30 years of the TIF, the net additional tax gain would be over \$500,000 in exchange for the town land Oceanview needs in order to do the larger addition.

Councilor Farber pointed out that, despite the labels on the landscaping plan shown with the proposed addition, the entire area from the parking lot to the detention pond is the "Village Green".

Mr. Holtwijk said the Village Green lot, as recorded in the registry, includes a portion of the parking lot all the way back to part of the detention pond. The portion in question is approximately 9% of the total Village Green lot.

Councilor Anderson asked the size of the lot; Mr. Holtwijk said the lot is 2.44 acres. If they transfer the .22 acres to Oceanview, it would be 2.22 acres.

Chris Wasileski of Oceanview said an engineer made an exact calculation on the amount of land that would be conveyed. He didn't have that with him tonight, but thought it was slightly below ¼ acre.

Councilor Farber thought there was no side setback requirement in this district; Mr. Holtwijk said that was correct.

Chair Goldberg opened the public forum.

Edie Lydick of Bayshore Drive urged them to approve the proposal for the larger addition and convey the town land from the Village Green. She is a real estate agent and spoke about an elderly client who sold her house in Falmouth because she could no longer afford to live here. She proposed the Town sell the land to Oceanview. Seniors are a valuable resource for the community, and they deserve the Town's support to help them remain in town.

Peggy McGehee of Stonecrest Drive asked that the Council not act on Oceanview's proposal until the Town has surveyed the residents on the use of the green, which is the people's property. The Senior Advisory Committee recently recommended that the green be developed as an extension of the proposed senior center at Mason-Motz. Many residents don't know the green belongs to the Town; they assume it belongs to Oceanview. The ¼ acre they are asking for is right at the front of the property; it is a critical location. This would impact the Senior Committee's proposed use of the green. Oceanview doesn't propose to pay for the land, but argued that the value is the increased taxes from the additional units. The Town's residents highly value outdoor recreational spaces. The 6 additional units would not be reserved for Falmouth residents nor would they be truly affordable. The comprehensive plan, adopted last year, calls for the Council to promote public awareness of outdoor public spaces. She argued that this hasn't happened yet with the Town Green. She said the Council should promote the Town Green and then ask residents what they want to do with it.

Bonny Rodden of Shoreline Drive was on the Council when the school properties were sold to Oceanview in 2008. She spoke about the original vision for the Village Green. In the sale agreement, affordable housing was listed as a potential use for Plummer. She strongly supported affordable housing for Plummer, but didn't think the affordability was going to be low enough. 120% of median income is \$74,000 for a couple. There aren't many units, and demand is going to be fierce. The Town ordinance specifically defines what affordable is; it isn't 120%, but 80%. She thought they should stick with the ordinance. She agreed with Ms. McGehee; she hasn't seen a lot of information on this topic and thought a decision was premature. The public has a right to know all the details. She asked the real estate value of the ¼ acre. She felt the "transfer" of land is inappropriate. She thought they should have another public forum with more information made available. She felt times have changed and the original concept for the green may not be right, but the public should be more involved.

Chair Goldberg closed the public forum.

Councilor Farber asked for a public notice that explicitly mentions the transfer of land. In the past, the Council asked PACPAC to review the landscaping plan and give their input on the green. She said her vision of the affordable housing TIF was to impact the affordability levels in the project. The 120% of area median income level is the state minimum. The Town can use some, or all, of its portion of the TIF funds to lower that.

Mr. Holtwijk said the base level is that 1/3 of all the units must be at the 120% level. They can exceed that by either making more units affordable, or by making the units more affordable. All the units don't have to be at that level; there can be a mix of market rate units and affordable units.

Councilor Anderson said an important element of the Senior Committee's recommendation was to have a door that would directly access the green; that is in the far back portion of Motz, near the playground. The Plummer addition would not impact that proposal. He argued that they are considering conveying the land, not the potential uses of the green lot. The landscaping design shown with the proposal is one idea. They could have a discussion of potential uses of the green at a later date. He pointed out that 1/3 of the units must be affordable; for the smaller addition that would mean 10 units; for the 34 units that would mean 12. He asked how many affordable units they are adding with the larger addition.

Mr. Wasileski said the additional 6 units in the larger addition would all be affordable; they would exceed the minimum requirements. The larger addition project would create 16 affordable units. He confirmed the earlier statements that the larger TIF would allow them to increase the affordability as well.

Councilor Anderson said if they convey this land, they would get 34 units, and 16 of them would be affordable. That is almost half of the units. Mr. Wasileski said that is correct.

Councilor King asked if they could use the TIF funds to make more units affordable in the smaller addition. Mr. Holtwijk thought they could do that.

Councilor Farber wondered if there was a way to do a swap with Oceanview somewhere else, the Ann Lamb Memorial Circle for example, to compensate for the land they want for the Plummer project.

Councilor Hemphill said open space, especially in this part of town, will become increasingly valuable. Adding to it would be well considered.

Councilor King thought the idea of a land swap was interesting. The green hasn't had time to develop in terms of use. She said they can have affordable housing in the smaller building and they can structure the TIF to make that happen.

An order was scheduled for November 9, 2015. Public comment will be taken again at that meeting.

Councilor Farber asked about the Memorial Circle; Mr. Holtwijk said the agreement with Oceanview states that the Circle and the Henry Binder Tree shall be preserved and shall not be altered.

The Council discussed the use of the lot; Councilor Anderson and Councilor Farber said they felt the discussion of the transfer of land should be separate from discussion on the use of the lot.

Mr. Poore summarized that the direction of the Council is for an order to authorize staff to negotiate a purchase and sale agreement with Oceanview, the Town Attorney and Oceanview's attorney, with conditions including affordability and referencing the commitment for Oceanview to do landscaping on the green. They would look at a swap of land, perhaps the circle, perhaps a trail easement at the back of the lot. Staff will advertise for public comment at the next meeting.

Councilor King asked for the minimum number of affordable units to be included in the order.

Item 9 Ordinance 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.

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

Item 10 Order to authorize the placement of a conservation easement on the former Stilling's parcel; presently a 23.3-acre portion of Blackstrap Hill Community Forest.

Mr. Poore said the property was purchased from the Stillings' at a discounted sale, but no permanent easement was placed on it. At the time, it was understood that it would be conserved at some point as part of matching funds for future grants. It was used in this fashion as part of the LMF application last year. The Council moved forward with the purchase of the land included in that application earlier this year, despite the LMF funds being frozen by the Governor. It has been 9 years since the Stillings' lot was purchased, and it seems like it is time to honor the agreement with the original property owner and place the conservation easement on it.

Chair Goldberg opened the public comment period; there was no public comment.

Councilor Anderson said this easement has value; if they agree to this it will meet their agreement with Mr. Stillings but he wondered if they could still get value out of this. Even though it's been a long time, he thought this was premature.

Councilor King pointed out that the Falmouth Land Trust is willing to hold the easement. Normally funds would be transferred to them for stewardship and legal fees but they have said they would hold this easement without charging anything at this time. That is worth something.

Councilor Farber said this wouldn't be an issue if the LMF funds had been released by the Governor. She felt they are trying to pick up after the freezing of the funds. This isn't a typical situation. She felt they should do this and acknowledge that this is happening due to circumstances beyond their control.

Councilor Hemphill said this is coming from LMAC as a priority recommendation to the Council to act on this specific property at this time. The sellers have been very patient; they understood this property would be converted and this is the time to do it.

Chair Goldberg said this was a commitment made many years ago. This action is a mop up and meets an agreement they made.

Councilor Farber moved the order; Councilor King seconded. Motion carried 6-1 (Anderson).

Item 11 Discussion and possible Order for the approval of a consent agreement for the violation of setbacks at 80 US Route 1.

Thaddeus Day, representing the applicants, explained that the Les' hired a contractor in April 2014 to build an addition onto their home. The contractor exceeded the contracted amount for the renovation, and it is still incomplete. The construction company submitted a sketch to the Code Office, and obtained the necessary permits, but when the Town's inspector reviewed the property, he noted problems with the front overhang of the building and he requested a new survey of the property. That survey revealed that the roof and foundation violated the rear setback of the property. At some point the zoning changed so that the rear setback is now 40 feet; other properties in the area come as close as 15 feet to their rear line. There was also fraud on the part of the contractor. The BZA approved an appeal for a mis-located dwelling for this property in July of 2015. This allows the applicants to go to the Council to ask for a consent agreement and, upon entering that agreement and payment of a civil penalty, proceed with their building project. He said that Mr. Le has done everything he could to work with the Code Office to correct the problem. When he learned that the survey that was submitted by the contractor was fraudulent, Mr. Le obtained and submitted a new survey. Due to the contract Mr. Le entered into with Averill Construction, it seems that the contractor is judgement proof, and Mr. Le will bear responsibility for any civil penalty. Mr. Le cannot finish the work to his house until the consent agreement is granted. He requested that the civil penalty be in the range of what they have imposed in the past.

Mr. Poore said they haven't granted many of these since the ordinance was passed in 2008. Past applications were typically for violations that were uncovered after many years. Granting the consent agreement would make the property legally nonconforming. This particular situation includes potential civil action between the contractor and the property owner.

Chair Goldberg opened the public comment period; there was no public comment.

Chair Goldberg asked about tonight's action; Mr. Poore said it would authorize him to enter into a consent agreement with the property owner, which would be filed at the registry of deeds and allow the violation to exist in perpetuity without further action. If the Council chooses not to act and there are no zoning changes, the Town would have to go through the 80K enforcement process through the courts, eventually forcing the property owner to correct the violation. In this case that would require significant demolition. If the Council grants the consent agreement and imposes a fine, the fine should at least cover the Town's costs for legal fees and filing at the registry.

Councilor McBrady and Councilor Hemphill spoke for imposing the least possible fine; this situation is not the fault of the property owner.

Councilor Kitchel agreed with Councilor McBrady; he asked if Mr. Poore could recommend a penalty.

Councilor Anderson thought Foreside Commons, the abutter to the rear, was unconcerned with the situation.

Mr. Day said Foreside Commons wrote a letter to the Code Office, prior to the BZA meeting, which stated that they did not object to the application.

Councilor Anderson supported the order and recommended a minimal fine. Chair Goldberg agreed; he felt the fine should not exceed the Town's costs.

Mr. Day pointed out to the Council that they paid the required application fee, which included money for the recording fee.

Councilor Anderson wondered if there was something internally to prevent situations like this in the future. Mr. Poore said it would take a lot more staff; they rely on applications to be accurate when submitted.

Councilor Farber said they do not require boundary surveys for building permits; Mr. Poore said that is correct.

Councilor Farber thought requiring those might have prevented this, but it would mean more costs for applicants.

Councilor Farber moved the order; Councilor King seconded. Motion carried 7-0.

Item 12 Discussion about future Council meeting dates.

The Council discussed whether to keep their regularly scheduled Council meeting on December 28, considering that the Christmas holiday is on the proceeding Friday.

Adjourn

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

Meeting adjourned at 9:19 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary