

# **Town Council Special Meeting**

## **Minutes**

### **November 9, 2015**

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

#### **Roll Call**

All Councilors were present and answering roll call.

Councilor Hemphill moved to suspend council rules and add an item to the agenda, prior to the executive session, relative to the Park and Ride Lot at Exit 53. Councilor King seconded. Motion carried 7-0.

#### **Item 1      Order authorizing up to \$1,900,000 of the Town's General Obligation Bonds to refinance and refund a portion of the Town's outstanding 2007 General Obligation Bonds.**

Peter McHugh, Director of Finance, explained that they are planning to refinance the bond issued in 2007 to pay for the new public safety building and the renovation of Central fire station. The gross savings from the reduction of the interest rate from 4.11% to 2.38 % is \$215,000; the issuance costs to refinance are \$75,000 for a net savings of \$140,000.

Chair Goldberg opened a public comment period. There was no public comment.

Councilor Hemphill said this was presented to the Finance Committee; it makes great sense for the Town to do this at this time.

Councilor Farber asked how many years are left on the bond.

Dick Ranagan of Gorham Savings Bank, the Town's financial advisor, said there are 11 years remaining on the bond. They are proposing to refinance the last 10 years.

Councilor Farber asked if they are extending the term. Mr. Ranagan said no, and they are not borrowing more money.

Councilor McBrady said this is clearly in the Town's best interest.

Mr. Ranagan said they are looking to close the transaction the first week in December, pending the Council's approval.

Councilor Farber moved the order as presented; Councilor McBrady seconded.

Mr. Ranagan pointed out that there was an error in the draft order.

Councilor Farber amended the order to authorize up to \$1,900,000 of the Town's General Obligation Bonds to refinance and refund a portion of the Town's outstanding 2007 General Obligation Bonds; Councilor McBrady seconded. Motion carried 7-0.

Amended order carried 7-0.

#### **Item 2      Public forum on the final report and recommendations of the Senior Citizen Advisory Committee.**

Dolores Vail, chair of the Committee, recognized and thanked the members of the Committee. They have five recommendations. She said that other communities are working on similar efforts, including the Cumberland committee on Aging in Place, and Yarmouth and North Yarmouth are working on a transportation network.

Peggy McGehee, of the Committee, presented the five recommendation of the committee:

1. Establish a Senior Center in the Mason Motz Community Center and create an accessible park on the Town green next to the center with access from the center.
2. Provide programs at the Senior Center.
3. Establish a volunteer transportation assistance network.
4. Hire a Senior Services Coordinator to distribute information to seniors, assisting with the senior center programs, and assisting the transportation network.
5. Extend the term of the Committee to September 2016 to advise Council on implementation, research more, and focus more on the affordable senior housing component.

Chair Goldberg opened a public comment period. There was no public comment.

Councilor Farber clarified that, in accepting the report, the Council is not committing to any of the recommendations or to a timeline for completing them. They are not approving any funds at this time.

Ms. McGehee said that the Committee is also requesting to add a couple members to the Committee.

Councilor Farber asked that an order be scheduled to accept the report, extend the charge and add two members at the next Council meeting.

**Item 3      Order - Pursuant to Section 102 of the Council-Manager Charter of the Town of Falmouth, the Town Council hereby orders and ordains that the interests of the Town require redevelopment of, and construction of an addition to, the former Plummer School for affordable senior housing, the donation of trail easements to the Town for public access over walking trails, a proposed land exchange, and landscaping/hardscaping improvements to the Village Green and general area, all as described in a proposed Development Agreement between the Town of Falmouth and the Ocean View Retirement Community Limited Partnership ("Ocean View"), and that the Town Manager is authorized on behalf of the Town to: (a) execute and deliver the Development Agreement between the Town and Ocean View; (b) execute and deliver a deed to Ocean View to a strip of land adjoining the Plummer School property (as described in Exhibit B-1 to the Development Agreement); (c) accept a deed from Ocean View to a parcel of land (as described in Exhibit B-2 to the Development Agreement); and (d) accept an easement deed from Ocean View (as described in Exhibit B-3 to the Development Agreement), all aforementioned instruments being substantially in the form presented to this meeting.**

Theo Holtwijk, Director of Long-range Planning, discussed the changes since the last Council meeting. Oceanview has re-evaluated the footprint of the proposed addition; the new footprint is slightly smaller and would use less of the Town's land. Instead of .22 acre as previously proposed, it will now need .11 acre, which is slightly less than 5000 sf. Oceanview is also offering 0.71 acre of the Plummer lot located at the corner of Lunt and Middle Roads to the Town in exchange for the land on the green. This area includes the Ann Lamb Memorial, the Henry Binder Memorial Tree, and the message board for the Mason/Motz Activity Center. Oceanview proposes to make up to \$35,000 worth of landscaping and hardscaping improvements for the Village Green and general surrounding area and grant the Town a public easement over the walking trails that surround the storm water detention pond on the southern end of the Village Green.

Chair Goldberg opened a public comment period.

Michelle Lamb of Middle Road was thankful that her mother's memorial circle will be preserved. One of the family asked that the Town notify the family if there were any changes to the property in the future. She was grateful for the Town Green and hoped it becomes what it was intended to be; a space for the community.

Peggy McGehee of Stonecrest echoed Ms. Lamb's comments. If there is going to be any suggestion of changes in the corner notification to the family should be incorporated in the development agreement. She appreciated that the Council has worked with Oceanview to get a better deal for the Town Green. The land swap and increase of affordability makes this more palatable. The original 2012 agreement did not limit Oceanview's financial responsibility for the Town Green, nor did it limit the time they would maintain it. She thought the \$35,000 would be too little; she asked for some language to be added to the agreement that put a timeframe on when the Green would be done.

Mr. Holtwijk said the draft agreement states that the landscape improvements would be complete within 6 month of completion of the Plummer project.

McGehee argued that permitting could drag on. She suggested adding "but no later than August 2016" to that statement.

Dolores Vail said having affordable units has always been her wish for Falmouth. She urged them to consider the fixed incomes of seniors when they approve this.

Public comment period closed.

Councilor King asked Oceanview about timing on completion of the project. She thought permanence of the memorial circle could be discussed by the Council at a later date.

Councilor Farber thought the current agreement said the circle must be preserve in perpetuity. She wondered if staff could draft some language to memorialize the intent of that parcel. Councilor McBrady agreed.

Town Manager Nathan Poore will research this with staff and bring something back to the Council.

To Councilor King's first question, Mr. Holtwijk said completion is typically tied to issuance of the Certificate of Occupancy. He didn't think Oceanview had any intent to delay the development, as it is an empty building currently.

Councilor Anderson didn't understand why there was linkage between the completion of the green and the Plummer building. He thought they could work on the park without waiting for the building to be done.

Mr. Holtwijk said it depends on the extent and nature of the improvements. There are improvements planned between the Mason/Motz and Plummer buildings. There is work that can be done separately, but it might be sensible to have one landscape contractor doing all the work at the same time. Councilor McBrady agreed. He supported the timeline after occupancy.

Councilor Farber felt there should be a middle ground here to cover the Town's interests while also allowing flexibility to Oceanview. She said they need more public input on the uses and development of the Town Green before installation of landscaping, and there should be language to that effect in the agreement.

Councilor Hemphill felt Oceanview has demonstrated that they get things done when they say they will. He was confident that they wouldn't drag this out and was comfortable with the language. He liked that they pulled back the amount of land that they needed, and while the resulting building will be imposing, they will get used to it. He was concerned about what \$35,000 will accomplish and was skeptical that it would be enough to fully install what is shown on the conceptual plan.

Councilor Anderson still didn't think they needed to go to the full CO stage to install the landscaping. The building exterior will be complete long before the interior is ready for occupancy. He agreed with Councilor Farber on needing more public input. He was comfortable with the \$35,000; he didn't want to commit them to an unlimited amount of money.

Councilor King said the plan would be worked on by the Town and Oceanview; the Town side could include residents. She felt the \$35,000 was a good contribution. She didn't think "substantial completion" necessarily meant issuance of the CO.

Councilor McBrady said to him it meant the walls are up and painted and the banks have signed off. He agreed that it didn't have to mean the CO was issued.

Councilor Goldberg said they are giving Town staff power to negotiate the agreement. He summarized the Council's discussion: there is some question on how they define "substantial completion"; there should be language on a definite time for installation; Oceanview's investment in the Town Green is not contingent on the project going forward; there should be some kind of public charrette into the design of the green; there should be some language on preservation of the memorial corner.

Mr. Poore said the order is set up to execute the deal tonight; if it is passed as written it will not come back to the Council. He recommended that they separate the treatment of the memorial circle, since that will be owned by the Town and will not be part of Oceanview. He asked Oceanview for clarification on whether the intent was for the green to be developed whether or not the project moves forward.

Matt Teare, of Oceanview, said they will have to post a performance guarantee as part of the Planning Board process; the value of the landscaping will be included in that amount. The purpose of the six month timeframe was to provide flexibility in the event the project was completed in November.

Councilor Farber moved to accept the order as written; Councilor McBrady seconded.

Councilor Kitchel asked for clarification on the change to the building footprint since the last meeting.

Mr. Teare said their previous footprints were conceptual. Based on the discussion at the last meeting, they asked the architect to revise it. They were able to shrink it down away from the tree and the playground.

Councilor Kitchel asked the distance between the old and new footprint. Mr. Teare thought it was 25 feet back from the previous concept plan. They were at 8000 sf before and are just under 5000 sf now.

Motion carried 7-0.

**Item 4      Ordinance to amend the Zoning Map to rezone the property located at 9 Lunt Road from RA to VCC.**

Councilor Farber moved the ordinance; Councilor McBrady seconded. Motion carried 7-0.

**Item 5      Ordinance to amend 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.**

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

**Item 6      Introduction of proposed amendments to the Code of Ordinances, Chapter II, Article 8, relative to the regulation of plastic shopping bags.**

Councilor Anderson said this began about a year ago when Portland passed its fee for single use plastic bags. Some Town residents asked the Council to review a similar policy for Falmouth. REAC and Energy and Sustainability Coordinator Kimberly Darling have done a great deal of research on bag policies and recommended a two year phase in approach, with a \$.05 fee on single use paper and plastic bags in the first year, and a full ban on plastic bags in the second year. The Ordinance Committee reviewed REAC's recommendations and weighed a great deal of public input. They drafted the attached proposal, which

mirrors regulations in both Portland and South Portland. The Committee felt consistency in the region was important. The research done by REAC showed an 80% reduction in bag use with just a fee, so at this time the Committee is recommending a \$.05 fee on single use plastic and paper bags at certain stores in Falmouth. If they want to implement a full ban in the future they still could. The fee in Falmouth will only be imposed on the 6 largest retailers in Town, in order not to burden small businesses. This focuses on the size of the business and doesn't just focus on food stores like in Portland. Also included in the proposed language is a requirement on the weight of reusable bags, to prevent stores from selling slightly heavier plastic bags and promoting them as reusable even though they really aren't sturdy enough. This proposal also exempts greenhouses, since they would meet the size requirement but they are small in terms of bag usage. The proposed effective date is April 1, 2016, in order to give businesses enough time to implement plans to comply.

Councilor Farber asked if there is anything to prevent a retailer from charging more. Councilor McBrady said they hadn't discussed it.

A public hearing was scheduled for December 14.

**Item 7        Resolution to support federal action at the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21) in Paris in December, 2015.**

Councilor King introduced the resolution and letter. Falmouth has been working to reduce its fossil fuel use in a financially responsible way since 2008. She discussed Falmouth's work on sustainability since then, and the progress that has been made. The Sierra Club of Maine has asked the Town to send a letter to the President of the United States to urge his administration to be part of a strong international climate commitment at the talks in Paris in December 2015.

Chair Goldberg opened a public comment period.

John Haley of Mast Road is a member of REAC. He supported the letter and urged the Council to sign it.

Glen Brand of Johnson Road is also the director of the Sierra Club Maine chapter and he supported the resolution and letter. He is proud of Falmouth's actions to reduce carbon emissions and energy costs. Falmouth as a coastal community is already experiencing the impact of warming in the Gulf of Maine. To fully address the climate crisis they will need state, national and international action. The upcoming climate meeting in Paris will be the most important one to date, and it is imperative that the US help strike a meaningful global carbon reduction treaty to avoid the worst consequences of climate disruption.

Public comment period closed.

Councilors Farber, Goldberg, Hemphill voiced their support of the letter.

Councilor Anderson wondered if this is a suitable role of the Town Council, to offer advice to the President on matters of international negotiations. Councilor McBrady agreed. It seemed like it was out of their realm.

Councilor King said there are many times when the Town has gone beyond the local and effected change that benefits Falmouth, such as their work on the street light legislation at the State. This is a democracy, where people speak to their representatives. In this instance the Council is speaking to their leader.

Councilor Farber moved to accept the resolution and authorize the Chair to sign the letter; Councilor Hemphill seconded.

Motion carried 4-0 (Anderson, McBrady abstained)

Councilor Anderson abstained because he didn't feel it was the Council's roll to involve itself in complicated international negotiations. Councilor McBrady abstained because he was not comfortable voting for it.

**Item 8      Order to approve a supplemental appropriation from undesignated fund balance not to exceed \$35,000 to complete the development of a Unified Development Ordinance.**

Councilor Farber said the first step in the project was moving the ordinance into the new online software, which has made it much more user friendly. The second piece was to reorganize the ordinance to make it easier to navigate. There are no content changes included. While it was understood that there had been layers of changes over time, once they got started it was surprising how many layers and conflicts there were. The original cost of the project was \$90,000; they are asking for \$35,000 more. A memo from the consultant is attached to the agenda, discussing how they will track their progress compared to the budget moving forward. She handed out samples of the work that the consultant has had to do. It had been much more complicated than was anticipated.

Chair Goldberg opened a public comment period.

Rachel Reed, a member of the ad-hoc Committee, explained that a big reason for the cost overrun is that the current ordinance is a nightmare. The Town will save money in the long run by saving staff time currently required to explain the ordinance to users. Using a consultant is the only way to do this; staff doesn't have enough time and bringing on additional staff is not efficient. She was looking forward to Falmouth being seen as an easier place to do development work.

Public comment period closed.

Councilor McBrady supported the project but wondered how they get to the \$35,000. Councilor Farber explained that this was a time and materials contract. They are about 70% of the way through; this estimate is based on an additional 30%. There is a summary of remaining tasks in the memo. The plan is for a check-in at the 50% mark of each task to give them a tighter control. They are hopeful that this can be done for less than the \$35,000.

Chair Goldberg thought this was similar to a home renovation, where you think it will cost a certain amount to fix the wiring and then find it will cost more once you open the walls. Councilor Farber agreed. She said there are some things that are almost done that could be simplified with some policy decisions; the Committee will draft recommendations and bring those to the Council.

Councilor Kitchel asked if they are comfortable with the quality of the consultants' work to date, and whether this amount of money will bring them to a completed project.

Amanda Stearns, Community Development Director, asked the consultant for a range of what it would take to complete the project. She spoke about the complexity of the ordinance, where every district and type of use requires different standards. The range the consultant gave her was \$24,000-\$35,000; this was based on their experience with the ordinance to date. This is a result of the Town amending the ordinance 70 times in the last 30 years, without taking a comprehensive look at it. The consultant has committed to checking in more frequently and keeping track of their staff hours more closely. One of the other options is for the Committee to come to the Council for policy changes to simplify some of the regulations.

Councilor Anderson asked how much the project will come to if the \$35,000 is spent on top of what has been expended to date, and also what the target date for completion is.

Ms. Stearns said they signed the contract for this phase in September 2014 and the original deadline was December 2015; they are hopeful that they will present this to the Council by the end of this Council year. The Committee has started discussing what level of public outreach they will need. They have expended just under \$90,000 with the consultant and \$7,000 in legal review at this point.

Mr. Poore said the original proposal from the consultant was much higher and they negotiated it down. This may be a case of negotiating the contract too thin.

Councilor Farber asked if the Committee recommendations should come directly to the Council or should go to CDC first. Chair Goldberg thought that would depend on the size of the policy change; some might be

small and others might be quite significant. Councilor McBrady stressed the importance of the committee holding some public forums. Councilor King suggested filtering everything through CDC; CDC could decide to send it to the Council if they felt it was more appropriate. Councilor Anderson wanted to streamline it to the extent possible. Councilor McBrady didn't think there was a rush; he wanted to take their time and do it right. Ms. Stearns pointed out that the work encompasses all the land use ordinances; it is over 300 pages.

Chair Goldberg moved the order; Councilor Farber seconded.

Councilor Hemphill felt this was really a \$125,000 project, and they didn't get it right the first time. Councilor King agreed.

Motion carried 7-0.

#### **Item 9      Discussion about assessing services being provided by Cumberland County.**

Mr. Poore discussed the state of assessing in the region. There are several towns that have joined to share assessing services; there are many assessors that have recently retired; there are towns that are looking for partners to share assessing services; and others that are looking at County assessing. It looks like most towns are moving to a similar staffing level for assessing. Assessing is already regionalized in the rural communities, since many of them use an assessing company. As far as Falmouth, the County has filled their empty position and is considering adding another position in anticipation of adding additional communities, but they have indicated that they are willing to take the risk of that position; it will not add to the Town's budget. The Yarmouth revaluation is on track. Falmouth is in good shape; while Gary James is leaving, Renee LaChapelle has been the lead assessor for Falmouth and is not leaving. The Town granted 13 abatements last year; this is the least amount in the last 5 years. There were a handful of complaints, mainly response related, but they were taken care of when he brought them to Mr. James.

Councilor Anderson asked about the notice if they wanted to withdraw; Mr. Poore said the County has relaxed that due to the current situation. If the Town needs more time, the County would give them that.

Councilor Anderson felt they should look at all their options given the current situation, including Cumberland pulling out. He wasn't sure it has been going well. He thought things are starting to unravel and they should look at whether there is a better way for Falmouth.

Councilor Farber said it was important to note that everyone that has participated in County assessing had different assessors and different histories going in. She was sorry other communities have had problems, but didn't think the year for Falmouth was poor. She wasn't sure what effect those other communities' histories had in their experience. She didn't want them to ignore what is going on in other towns, but wanted them to focus on Falmouth's experience.

Councilor Anderson said this is as partnership; if it doesn't work for everybody, it doesn't work for anybody. He was concerned about the Lead Assessor quitting after only one year. He asked about the financial picture if Cumberland backs out, and the financial implication for Falmouth.

Chair Goldberg clarified that they were not in partnership with the other towns; each town had a separate contract with the County as a service provider. Their only other alternative at the time they entered into this was to search for a town employee; that person might have left as well. He agreed with Councilor Farber that they should focus on their experience with the County.

Councilor Kitchel thought this was a work in progress and an opportunity to consolidate services. This will help the Town control the tax rate. This is a big issue for him in looking into the future. He spoke about other areas in the country where the county provides services such as public works and schools, instead of the municipalities, which keeps taxes down.

Councilor King felt it was in their interest to make this set up work. They should really look into what has happened but this seems to be an efficient model.

Councilor McBrady wanted the Town Manager to give them more information on other options and what is going on with the County.

Mr. Poore said more research would only show the same results as what they put together when they entered into the contract with the County last year. There is agreement across multiple parties on the FTE/parcel model; it is about 1 FTE per 3500-4000 parcels. While each community had its own contract, they worked together to put those contracts together.

Councilor Anderson said they don't know what the next year with County will look like, how many towns will be involved. It is easier to manage a partnership with another like town than it is to delegate it to another level of government. They share other services with other towns, and he would like them to use that model with assessing.

Mr. Poore agreed that they don't know what the County budget will be next year. He didn't think the in-house department model works anymore. He felt a micro-regional level at the least would work but they would be negotiating the same terms and conditions as they have with the County. The cost is going to be identical to what they have today. He suggested letting this go for another year, and then assess where they are. If they don't want to be with the County, they should analyze who the best fit would be.

Chair Goldberg argued that this was a new model, driven by a lack of options, and it has only been a year. He didn't think they should pull out after only a year. The option to pull out was only in the event of catastrophic failure, which hasn't been the case for Falmouth. He felt the model needs another year to assess whether it is working.

Councilor Farber asked about next steps. Mr. Poore said the next logical step was to push on the County for the budget. Once they have that, the Council could take this up again. He will continue discussions with other Town Managers about their experiences.

Councilor Anderson encouraged him to be open to looking at whether another partner would be a good fit for Falmouth.

Councilor King felt it was reasonable to be the steady partner in this relationship with the County, during what is really a personnel transition. She was concerned about splitting their energy in two different directions.

Mr. Poore said he would let the Council know if he received any interest from other communities.

Councilor Hemphill supported giving the County a chance for another year.

**Item 10      Order to reschedule the regular December Council meeting to December 14, 2015.**

Councilor Farber moved the order; Councilor McBrady seconded.

Public comment period opened; no public comment.

Motion carried 7-0.

**Item 11      Order to authorize the Town Manager to enter into a lease agreement for the purpose of replacing the Park and Ride lot at Exit 53.**

This item was added at the beginning of the meeting.

Mr. Poore explained that the MTA is eliminating a park and ride lot as a part of their project on the toll road; while public notice was given for the project, the fate of the park and ride was unclear until just recently. It is in an unsafe location, but MTA has no viable option for relocating it. Town staff have been looking into options, and spoken with the property owners of Hannaford about a possible solution. They haven't heard back from them at this point. Staff is currently suggesting using the site where the silver bullets used to be



located. It is the right size for a travel aisle and 9 parking places and will require very minimal work, removing the fence, striping, etc. It was initially unclear who owns the property; the Town Attorney discovered that half of the parcel is Hannaford's and the other belongs to the Owners' Association; it is considered part of their open space. The Town has received approval from 4 out of the 6 owners for this deal. The Town would have a two year land lease; the property owner could kick the Town out without reason with reasonable notice and would be indemnified. MTA will take all the expenses of improving it and the insurance and indemnification; all the Town would be responsible for is plowing. This site could become the permanent solution with further expansion of the parking area.

Councilor McBrady asked if there was any cost associated with the lease; Mr. Poore said no, other than the plowing.

Councilor King said this is a temporary solution if the Hannaford solution didn't work out. Mr. Poore thought it could be both locations, if Hannaford was interested.

Chair Goldberg asked about MTA's effort to relocate the lot; Mr. Poore thought there was a communication slip-up here but everyone has risen to the challenge.

Councilor King thought Shaws has a dedicated park and ride location; Mr. Poore said yes, that is for METRO.

Councilor Farber moved the order as read; Councilor McBrady seconded. Motion carried 7-0.

**Be it ORDERED by the Town Council of the Town of Falmouth, Maine in Town Council assembled:**

1. That the Town Manager, acting on behalf of the Town, is authorized to enter into an agreement to lease certain land owned by West Falmouth Crossing Owners Association ("West Falmouth Crossing"), generally depicted on Exhibit A hereto and described as Common Area "A", and located in the Town of Falmouth ("subject property"), and further to lease access over certain rights of way leading to and from the subject property as well as the rights to install and maintain signage, all for the purpose of developing a Park and Ride facility for Town residents and other commuters, subject to the following conditions:
  - a. The lease agreement shall be terminable by the property owners without cause upon 60 days' written notice; and
  - b. The lease agreement shall be assignable by the Town to the Maine Turnpike Authority, with written consent of West Falmouth Crossing, in the event that the Maine Turnpike Authority undertakes development of the leased premises as a Park and Ride facility.
2. That the Town Manager shall enter into the lease agreement described in section 1 before January 1, 2016, unless such period is extended by the Town Council.

**Item 12      Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider negotiation parameters associated with the Maine Association of Police contract renewal, pursuant 1 M.R.S.A. § 405 (6) (D).**

Councilor Farber moved to enter executive session; Councilor Anderson seconded. Motion carried 7-0.

The Council entered executive session at 10:07pm and did not return.

Respectfully submitted,

Melissa Tryon  
Recording Secretary