

Town Council Meeting Minutes December 14, 2015

The meeting was called to order at 5:30 pm.

Roll Call

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

Councilor King was absent.

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

Chair Goldberg moved to enter executive session; Councilor Farber seconded Motion carried 6-0.

The Council entered executive session at 5:35 pm.

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

No one spoke at public forum.

Item 3 (a) Order to approve the minutes of the November 23, 2015, Town Council Meeting. (Consent Agenda)

Item 3 (b) Order to authorize the Town Manager to execute a quit claim deed for Map (Consent Agenda) R09, Lot 058.

Councilor Farber moved the consent agenda; Councilor Anderson seconded.

Councilor Hemphill amended the minutes of November 23.

Motion carried 6-0.

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

Councilor Hemphill reminded Councilors about the CDC meeting on Thursday at 5:30pm. They will be discussing the zoning amendments they have been working on. There will be more public meetings and hearings on this material in the near future.

Councilor Farber said the library has been working on its budget for the coming year. Last year the Library began to bring employee salaries up to par with other libraries in the area. They staggered those increases across budget years, so there should be a request for another increase this year.

Councilor McBrady said the Route 100 committee met with FST and held a public forum last Wednesday. There was great public comment. They will meet again this Wednesday to review the information they received.

Councilor Hemphill said ecomaine reported that Falmouth exceeded a 50% recycling rate in November. That is a remarkable number and is far above all the other participating communities.

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

Councilor McBrady said the recommended appointees have reached the end of their term and are being reappointed for another term.

Chair Goldberg moved to approve the slate of appointees; Councilor Farber seconded. Motion carried 6-0.

- Conservation Committee: Steve Decrosta & Nancy Lightbody
- Economic Improvement Committee: Dimitri Balastos
- Harbor/Waterfront Committee: Bill Oliver
- Human Service Committee: Nancy Lightbody
- Land Management Acquisition Committee: David Gagnon & Fred Masciangelo
- Long Range Planning Advisory Committee: Sam Rudman & Sandra Lipsey
- Parks And Community Programs Advisory Committee: Melanie Collins
- Planning Board – Regular Member: Jason Cole
- Recycling & Energy Advisory Committee: Andy Jones, Peter LaFond,
- Shellfish Conservation Committee: Steven Decrosta

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

Chair Goldberg opened the public hearing.

Susan Hall from Just-a-Mere Road spoke in favor of the ordinance. Plastic bags are forever, and their convenience is not worth the impact to the oceans and environment. She would rather see a ban, perhaps in the future.

Andy Jones of Ledgewood Drive, chair of REAC, spoke in favor of the ordinance. They are moving in the right direction.

Taz Mumford of Gray Road liked the idea of eliminating bags but he asked the Council to send this back for study. He thought it was wrong financially. For the last 50 years the stores have provided bags to customers. The six businesses that will be impacted by this ordinance use a lot of bags, but no one knows exactly how many. The bags cost the business about \$0.02 each; this ordinance will generate additional revenue for these companies from bag sales. He thought the \$0.05 fee should go to the Town for some use that would promote recycling or cleaning up the town. Making an expense to the company into a profit center is wrong. He also suggested that the businesses should return the \$0.05 to anyone that brings in a reusable bag.

Chair Goldberg closed the public hearing.

An order was scheduled for January 11, 2016.

Item 7 Order to authorize the Town Manager to reduce the required permitting fees for the Falmouth Memorial Library's expansion project.

Councilor Farber explained that there are a number of fees associated with the approval process for the expansion. In the case of the schools, the Town waived all but the costs of staff time associated with the permit review process. The trustees have requested a full waiver of fees; town staff have recommended a similar process to the one used for the schools as well as for Casco Bay Youth Hockey's project last year.

Chair Goldberg opened a public comment period.

Andy Jones of Ledgewood Drive said that every dollar will count for this project, but this is also a symbolic gesture. He felt this was very important and he supported waiving the entire fee.

Chair Goldberg closed public comment.

Councilor Farber asked about the scale of the project.

Mr. Poore said it is hard to estimate, but the permit fees could reach \$40,000 to \$50,000. He thought the Town would look to get 50% of the inspection fees, but since normal site plan review fees don't even cover the Town's costs there would be no reduction in those fees.

Councilor Farber wondered if the order should be more precise, in regards to their intent.

Mr. Poore pointed out that there was a chance that they might have to bring in a consultant to review the application. In that case, he would like to keep the wording of the order so that they could recoup any of those outside fees as well.

Councilor Anderson felt it should be treated the same way they did the elementary school project. Councilor Hemphill agreed. He felt reducing the fees to cost was a fair compromise.

Councilor Farber moved to approve the order to read "To authorize the Town Manager to reduce the required permitting fees to cover Town costs for the Falmouth Memorial Library's expansion project." Councilor Hemphill seconded.

Mr. Poore clarified that the Town's intent is not to charge any more than what the fees would typically be.

Motion carried 6-0.

Item 8 Order to approve a supplemental appropriation from unassigned fund balance in the amount of \$70,000 to enhance insulation in the attic of the Town Office.

Mr. Poore said the Council discussed this at the last meeting. Staff put it out to bid and received three highly qualified proposals. The preferred bid also happens to be the lowest bid. The order tonight is for a supplemental appropriation for \$70,000: \$60,000 for the contract with NorthEast Spray Insulation, \$5000 for additional consultation and inspection by an outside consultant, and \$5000 for contingency.

Councilor Kitchel asked the completion date of the project; Mr. Poore said mid-February.

Councilor Anderson asked if this additional expense will push the Town Hall project above the \$1 million that would require a referendum. Mr. Poore said it is close.

Councilor Anderson said they thought the original project was all they were going to need to do. He asked how confident they were that this will solve the problem. Mr. Poore said they spent a lot of time and effort on the RFP and the bidders spent a lot of time reviewing the project and speaking with the consultant. There are no guarantees, but he felt this gives them their best shot.

Councilor McBrady said he and Councilor Hemphill toured the building with the consultant and the bidders. He thought they have to do this project. He would like to look back at the renovations to see how and where the ball was dropped on this issue. He was perplexed that no one thought of this at the time.

Chair Goldberg opened a public comment period.

Jim Beaulieu of Blackstrap Road has served as the consultant on this project. He agreed that \$70,000 is a lot of money, but the projected savings in operating expenses is over \$2000/year. They can expect a payback to the town between 15 and 20 years. This is a good investment from a cost savings perspective, as well as addressing the safety issue.

Public comment period closed.

Councilor Kitchel moved the order; Councilor McBrady seconded. Motion carried 6-0.

Item 9 Order to terminate the town's right of incipient dedication in Halter Road and Overlook Farm Road, in the Overlook Farms subdivision.

Mr. Poore said the Town partnered with the Falmouth Land Trust to purchase this property earlier this year. The property had previously received subdivision approval from the Planning Board but since it will no longer be developed the subdivision approval is no longer required. The process to vacate a subdivision is governed by State statute; this is the first step.

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

Councilor Farber moved the order; Councilor Anderson seconded. Motion carried 6-0.

Item 10 Order to authorize the Town Manager to execute an easement that will grant 469 Doten, LLC (developer of a proposed restaurant known as Rivalries) access to Hat Trick Drive, a town owned property, for access to their property at the corner of Clearwater Drive, Farm Gate Road and Hat Trick Drive.

Item 11 Order to authorize the Town Manager to execute an easement that will grant the Town of Falmouth property rights associated with a sidewalk being constructed by 469 Doten, LLC (developer of a proposed restaurant known as Rivalries), that will be partially located on private property.

Item 12 Order to authorize the Town Manager to execute an agreement that will require 469 Doten, LLC (developer of a proposed restaurant known as Rivalries), to reimburse certain expenses associated with the construction of Hat Trick Drive in exchange for an easement to access Hat Trick Drive.

Mr. Poore said the proposed Rivalries restaurant received Planning Board approval recently. These three agreements are part of that approval. The property owner, 469 Doten LLC, needs property rights granted to them to use Hat Trick Drive, since the road is not a public way; the first easement grants them this access. Some of the work that the Town is doing on Hat Trick Drive will benefit the Doten property, including the curb cut and lighting; the agreement outlines how Doten will reimburse the Town for some of those construction costs, and includes a yearly payment for maintenance. The development is served better by part of the Farm Gate sidewalk being sited on private property as well as on the public right of way. In order for the public to use it, 469 Doten LLC is granting an easement to the Town on the part of the sidewalk that is on private property. Doten LLC will construct and maintain the sidewalk. There is no monetary exchange for that easement.

Councilor Anderson said there is an existing curb cut on Hat Trick that accesses the subject property; he wondered if that is consistent with the site plan approval and whether there was any additional curb cuts proposed.

Jamie Mason, Town Engineer and Project Manager for Hat Trick Drive, said the road is set up for the brick sidewalk and the curb cut is complete.

Chair Goldberg opened a public comment period on all three actions. There was no public comment.

Councilor Farber moved order 72-2016; Councilor McBrady seconded. Motion carried 6-0.

Councilor Hemphill moved order 73-2016; Councilor Farber seconded. Motion carried 6-0.

Councilor McBrady moved order 74-2016; Councilor Anderson seconded. Motion carried 6-0.

Item 13 Order to authorize the Town Manager to issue a Request for Proposals for a Comprehensive Water System Study for Falmouth.

Theo Holtwijk, Director of Long-range Planning, said the comp plan includes an item that discusses proactively planning for sewer, water, and other utility expansions. The Town has discussed conducting a joint water study with Portland Water District (PWD). The scope of work is attached and staff are recommending issuing a RFP. They would like to initiate the study this winter, to be completed this July. It would help with the planning of upcoming road construction projects. For example, the study would help the Town determine whether to include water in Middle Road prior to repaving.

Councilor McBrady asked about the potential for funding partnerships with PWD in this study. Mr. Holtwijk said there are no guarantees; the Town has suggested some in-kind. PWD's funding is limited to maintaining its current system. The study would determine where it is most feasible. There may be places where expansion could improve the district's operating needs and they might see an opportunity to use capital improvement funds.

Councilor Farber asked what the cost of this might be. Mr. Holtwijk said the current sewer study, west of 295, is less than \$100,000. The geographic area of the water system, and the complexity of the water system study, is much lower. He thought it would probably be \$25,000 or less.

Mr. Holtwijk said the comp plan item reads as follows: **"Proactively plan for sewer, water, and other utility extensions in the designated growth area. Assess the options and means of participating in collaborative efforts with agencies and regional groups to better serve residents and businesses...(b) Establish a plan for additional public water service in the designated growth area in cooperation with the Portland Water District (PWD)... staff to develop specifications and costs estimates for a public water line expansion feasibility and needs analysis within designated growth areas. Council to consider funding a public water line expansion study at a later date."**

Councilor Farber said LPAC and CDC should be included in the process.

Councilor Kitchel asked if residents would be obligated to tap into a new water line. Mr. Poore said he didn't know, but that will be part of the study.

Chair Goldberg opened a public comment period; no public comment.

Councilor Kitchel moved; Councilor Hemphill seconded. Motion carried 6-0.

Item 14 Discussion about a proposed framework for a formal Conflict of Interest Policy.

Councilor Anderson said this policy would be an amendment to the Council rules and would only impact the Town Council. As a result of their discussion in October, the Council authorized a subcommittee of Councilors including Anderson, Farber, Hemphill and King to meet and draft a list of specific questions to send to the Town Attorney. Attorney Tchao submitted a written response to those questions last week.

Councilor Farber felt the law surrounding this issue is focused on financial interest, perhaps because that is the only concrete way to assess someone's interest. If there is no personal financial gain for a councilor, she asked how anyone can argue that there is or is not a real conflict. She struggled with the concept that personal interest could be considered a conflict of interest. Financial gain is a gain that could subvert and thwart the

democratic process. She asked how they would craft a policy that would weigh any conflict other than financial gain, or even if they wanted to.

Councilor Anderson said they aren't talking about a policy that would prevent a councilor from voting on an issue that was important to them. They are talking about a policy that goes a little beyond the State statute, in outlining clear conflicts where a councilor occupies a clear position of authority in an organization that might benefit from a council vote. He said they can't serve two masters. This policy would give the Council and the public more definition on when it is and is not appropriate for a councilor to participate in a vote. He said the situation comes up every few years, where a councilor is participating in a vote and other councilors feel they shouldn't. He said this definition is pretty narrow. Without it, they each have a different definition of what is appropriate. He felt it was in the public's interest for them to adopt this policy.

Councilor Kitchel supported the policy. He felt it was critical to put this in the Council's rules, so that every councilor is aware that conflict is an important issue. He asked what happens if a councilor thinks he might have a conflict, but is not sure. He asked if that councilor would consult with someone, or be left to make his own determination.

Councilor Anderson thought they could decide that if they move forward with drafting this policy. The framework before them defines conflict three different ways. He said there will always be gray areas; according to this draft, it would be up to the individual councilor. If it was him, he would consult the policy, and perhaps seek input from another councilor, from the Town Manager, and perhaps from the Town Attorney.

Councilor McBrady was unclear about financial gain; he said one could work for a company that profited from a project in town but the councilor did not directly benefit. This could be a guideline for the councilors to go to, and then if they were still unclear, they could consult the Town Manager or Town Attorney. He urged simplicity in the wording of the policy.

Councilor Farber agreed with the goal of simplicity, but thought they needed to be careful. It is easy in a small town for the Council to have an item that would benefit four members of the Council due to geographic location, for example road paving, laying water lines, or zoning changes. She said they should be careful of creating a situation that would impair the Council from making decisions. She said that their decisions are very public and, if the public doesn't like what they are doing, there is a remedy at the polls. She felt that land use policies, outside of spot zoning a councilor's personal property, should be outside the conflict policy.

Councilor Hemphill said the Council is all governed by conflict of interest policy, under state statutes. Financial interest is the key to all of them. He spoke about the language regarding "appearance" of a conflict. The distinction between personal interest and public interest is important; decisions that benefit the public should not be shied away from. He felt they were all aware that they are governed by these policies that already exist.

Chair Goldberg felt there was some value in a statement being incorporated into Council rules, to provide a road sign for new councilors if nothing else. He felt it needed to be a fairly loose policy and the language framework proposed is self-policed. He wanted to know who a councilor would turn to, if he didn't know whether he had a conflict or not.

Councilor Anderson felt they could put guidance in the policy. He was not aware of any policies that govern the Town Council. He felt a goal of the policy should be to define what isn't a conflict, in order to protect councilors.

Chair Goldberg said that when conflicts exist, they are pretty apparent. He argued for keeping the language simple.

Councilor Kitchel agreed with simple language. He wondered about setting up a subcommittee to weigh potential conflicts.

Councilor Farber said the ultimate resource would be the Town Attorney; it isn't a good position for town staff or a subcommittee. She asked about the situation where a councilor's spouse or immediate family member works for the school department or library. She didn't want to discourage people from running for office. She suggested that someone draft some language for them to review.

Councilor McBrady and Chair Goldberg agreed with the suggestion for specific proposed language.

The Council discussed next steps.

Town Attorney Amy T'chao suggested the Council come up with a number of examples of what is or isn't a conflict, and then use those to test out the language. Perhaps the subcommittee could work to draft those examples.

Councilor Anderson said they should draft a preamble to the proposed framework that would explain the need for, and goals of, the policy, as well as some guidance for councilors on what to do if they are unsure if a conflict exists.

Councilor Farber suggested the subcommittee be reduced to three members and offered to step out. Four is a majority of the Council.

The Council requested that the Town Attorney draft something for the subcommittee to review and then it would come back to the full Council.

Item 15 Update on the Council's 2015-2016 Work Plan.

Mr. Poore said the Council drafted a robust work plan this past summer. Much of the heavy lifting is being done by Council subcommittees, volunteer committees and town staff.

Chair Goldberg asked about completion rate. Mr. Poore said they average about 65-70% completion rate every year; they got a fast start this year, so they may do better than that this year.

Councilor Anderson asked about the vacancy at the former Shaws. Mr. Poore said the CDC is meeting Thursday to discuss their process on the zoning implementation. Senior Planner Ethan Croce has been assigned to draft a background memo on the situation and how the zoning may or may not be impacting development of that space.

Councilor Anderson asked if CDC will take this up next; Councilor Farber said CDC will take up Route 100 next. They will discuss the memo at their meeting in January. The recommendation might be to push it off to FEIC or someone else, but it will be discussed.

Mr. Poore said, unless there is a specific request, he will provide another report in the spring.

Adjourn

Councilor Kitchel moved to adjourn; Councilor McBrady seconded. Motion carried 6-0.

The meeting adjourned at 9:05 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary