

Town Council Meeting

January 11, 2016

Minutes

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

Roll Call

All Councilors were present and answering roll call.

Item 1 Ordinance to amend the Code of Ordinances, Chapter II, Article 8, relative to the regulation of plastic shopping bags.

Councilor King moved the ordinance to amend the Code of Ordinances relative to the regulation of single-use paper and plastic bags; Councilor Hemphill seconded.

Councilor Anderson said that staff have contacted the six businesses impacted by the proposed ordinances. There were no objections raised by those businesses; 5 of the 6 either had no comment or were supportive. One retailer currently sells a bag that is relatively thin; while they market it as reusable, the ordinance as currently written does not consider that a reusable bag and would subject it to the 5 cent fee. This business has asked for an amendment to remove the thickness limit on bags considered reusable.

The Council discussed the request. Councilor Anderson was not supportive of the request; the CDC's decision to include the thickness limit was well researched and discussed at length. Councilor McBrady and Councilor King agreed.

Councilor Farber said the goal was to reduce the use of single-use bags. She wondered why they would involve themselves in a product sale transaction between the consumer and the retailer.

Councilor McBrady said their thought was to change people's patterns and get rid of single-use bags. The ordinance is written to change people's behavior of getting new bags each time they shop. He thought these bags skirt that issue and would not have the desired result.

Councilor King said the store can still sell these bags; this will not prevent that.

Councilor Anderson clarified that they can sell it, but cannot market it as a reusable bag.

Councilor Farber disagreed; there is nothing in the ordinance that speaks to marketing. Also, the ordinance specifies that the retailer can charge 5 cents. She thought they would not be allowed to charge the current 10 cents.

Councilor Anderson said there is nothing in the ordinance that prohibits them from selling bags for whatever they want to charge. They have to charge 5 cents for anything that is less than 4 mil thick.

Councilor Farber said she had a question from a resident that was concerned that the ordinance would limit what a consumer could use to bring purchased items home; she clarified that people can use whatever they want.

Motion carried 7-0.

Item 2 Update on the Mill Creek pump station replacement and force mains projects, an Order to authorize the Town's General Obligation Bonds to finance the replacement of the Mill Creek Pump Station and installation of force sewer mains, and an Order to appropriate funds from the Town's Wastewater Enterprise Fund to finance a portion of the costs of these projects.

Councilor Farber moved to table the item until the next meeting. Councilor King seconded. Motion carried 7-0.

Item 3 Discussion of a requested amendment to the sign provisions in the Zoning and Site Plan Review Ordinance related to off-premise, free-standing signs in certain instances.

Mr. Poore discussed the location of the parcel in question. Originally there were three properties; the original property has been subdivided with one common entrance. This has created a situation where Cianbro, who wants to move into a vacant building on the site, cannot place a sign at that common entrance, because it would qualify as an off-premise sign. They would be allowed to place a sign on the lot that includes the building, but this would be misleading to the public as there is no entrance there. Other multi-tenant panel signs in Town include multiple businesses that are all on the same lot. If the Council is in favor of moving forward with this amendment, staff will work on language and bring it back to the Council within the next month.

Councilor Farber pointed out that the VC districts allow off-premise signs. She felt this was a reasonable request.

The Council was in favor of staff drafting amendment language for an introduction.

Item 4 Introduction of an amendment to the Code of Ordinances, Article II-9-4, Section 9-94, in order to increase the number of moorings allowed for a marina.

Councilor King said the ordinance currently limits the number of moorings for a marina to 60. The only marina in town is Handy Boat. They are asking to increase the number of moorings they are allowed to 70. Handy Boat has room in their mooring field for this increase. These additional moorings would be intended for boats needing repair, or for transient boats needing a mooring for the night.

Councilor Farber asked if either the Yacht Club or Town Landing are limited in a similar way.

Police Chief Ed Tolan said the ordinance differentiates between a yacht club and a marina. This request is for an increase for a marina only.

Chair Goldberg asked how long they have had this allowed number; Chief Tolan didn't know exactly, but it has been a long time.

Councilor Hemphill asked if there is any issue of crowding; Chief Tolan said no. Town Landing is limited by the parking available for boat owners. Handy Boat has sufficient parking, and the "transients" referenced in the request are typically people sailing up the coast of Maine who don't even have a car.

A public hearing was scheduled for February 8.

Item 5 Order to amend the Falmouth Harbor Fee Schedule.

Councilor King said the mooring fee hasn't been changed since 2009. This request is to raise the fees by \$3 each. Some of this is a pass-along for online registration expenses. This would bring the resident fee to \$60, and the non-resident fee to \$260.

Chief Tolan said the online mooring fee program is going up \$1.

Mr. Poore said the Town's Finance Department is planning to study the fee systems across Town departments in the next year.

Councilor Farber wondered why they weren't raising it more. Councilor King thought it would be extremely contentious. This will address the current need.

Councilor Hemphill thought they could further address this issue once Finance does its analysis for fiscal year 2017.

Mr. Poore said the user fees covers operating costs; the bigger issue is whether replacement and capital costs are being adequately covered.

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

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

Item 6 Discussion with the Town Manager of a draft agreement between the Town and the Maine Department of Transportation and a draft Request for Proposals (RFP) regarding the redevelopment of the Maine Turnpike Falmouth Spur Ramp System where it intersects with Route 1 in exchange for the right to develop an approximately 11-acre surplus property located easterly of Route 1.

Mr. Poore said there was a press conference last week announcing this project. Staff is recommending that the Council schedule a public forum on this issue for January 25, to allow for the public to provide feedback. In 2009, there was a public charrette to discuss potential uses of the vacant portion of the Shaws lot; about 60 people participated. Some of the feedback from this charrette concerned potential development of this parcel. The Town had a feasibility study done of the parcel, which found it to be possible to develop. About 1½ years ago, MDOT approached the Town about a potential agreement. The Council has been discussing this potential project in executive session up to this point. Under the draft agreement, DOT has stated that they are not willing to spend money on the property; any developer would have to make or finance the infrastructure improvements and DOT would then turn over the intersection to the Town to maintain in perpetuity. Staff have drafted a RFP that would request developers to submit their ideas for development, zoning for the property, and the redesign of the intersection.

Mr. Holtwijk discussed the proposed process. If the Council is ready to authorize the agreement and the RFP at their next meeting, staff is ready to issue the RFP the following day. Once the RFP is issued, they would hold a pre-bid meeting. DOT has asked that the land be appraised as a vacant parcel of developable land; the Town has contracted with Amidon Appraisal for this work and expects the report to be available in mid-February. RFP's would be due in April and after an intensive review process with the Council, they could recommend a developer in May. The DOT would then sign a P&S agreement with the preferred developer sometime this summer; the Town will never take ownership of the land. This would allow the DOT to approve the highway piece and the Council to approve the land use component in the fall. This would put the Planning Board approval process in the winter of 2017 with construction beginning the following spring. A project of this size would likely take a year to a year and a half, leading to completion in 2018.

Mr. Poore said when the Council did the RFP for the elementary schools, they asked for the bids to be opened in confidence in order to protect the Council's negotiating and bargaining position. Bids were made public later in the process. The Town Attorney issued a legal opinion that this was allowed. The Council should discuss if they want to follow this process again. The Council should also consider whether they want to retain the services of a commercial real estate broker. A realtor was used for the elementary school project, since there was going to be a cash payment to the Town. That is not the case in this project. He asked if there is a need for real estate services for this project, since it has been fairly well publicized already at this point.

Chair Goldberg summarized tonight's discussion: if the RFP is a go or does it need more discussion; are the bids public once opened, or will they be kept confidential; does the Council wish to use a commercial real estate broker.

Councilor King said this is a huge project; she wondered if there are any regional or local developers that are big enough to handle this kind of a project.

Councilor McBrady thought it would be in the Town's best interest to keep this in-house, at least initially. He thought a broker would bring developers to them, but he didn't think they needed to do that yet.

Chair Goldberg recused himself from the conversation around the real estate broker, since Boulous is doing business for his company.

Councilor Kitchel asked whether the 11 acres is measured within the exit ramp, or along the outside.

Mr. Holtwijk said that majority of developable land is encompassed by the roadways. It has extensive road frontage along Route 1.

Councilor McBrady asked if there is any land on the west side of Route 1.

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Mr. Holtwijk said yes, part of the project includes the removal of other roadways since they would not need them. There would be some smaller opportunities on the west side of Route 1 as a result, but DOT has asked to focus on the large parcel first.

Chair Goldberg asked who would be responsible for the removal of those roadways; Mr. Holtwijk felt it would be part of the highway project. The Town will need to maintain dialogue with the DOT about those.

Councilor Anderson understood the timeline to mean that all the highway construction would need to be completed prior to any development of the land. He wondered if a developer would want to begin site work for the development concurrently with the highway work. Mr. Holtwijk agreed and said the Town will need to work with DOT on that.

Councilor King pointed out that there would be no revenue for the developer for many years.

Mr. Poore agreed, and said it is a very large construction project. This is only one potential timeline. He felt developers could submit a more aggressive timeline with their proposal.

Councilor Farber felt this was a very short timeframe for proposals to be submitted. She was concerned that this schedule is too aggressive.

Mr. Holtwijk felt it was a good timeframe; if they hear from developers at the pre-bid meeting that it is too short, the deadline can be extended. It is in the Town's best interest to get good quality proposals. Their understanding is that the development community wants to move fast.

Councilor Farber was also concerned about the timeframe for the Council. She agreed with Councilor McBrady's comments relative to a marketing agency. She wondered how they would pay them. She was leaning toward the Town doing it alone for now. She was unsure whether the Council could discuss the proposals in executive session, since this is not a financial transaction for the Town. She didn't know what they would be protecting in relation to their negotiations.

Councilor McBrady said it would give them the ability to look at the proposals and determine what would be in the best interest of the Town long-term. Having those discussions in the public might make it more complicated.

Mr. Poore said there may be many terms and conditions, including requirements of the Town. A limited development partnership will be negotiated from day one. Disclosing all the plans at the beginning, including their competitors, would put them at a disadvantage. They want it to be transparent, so they would want to do this quickly.

Councilor Anderson thought it would be in the Town's interest to do this in executive session as much as possible. It isn't as much to keep it from the public as it is to keep the proposals from the competing developers until they have chosen a preferred developer. They may have very different negotiations with each developer. Councilor Kitchel and Councilor King agreed. They want to have negotiations with each developer, and not have developers negotiating with each other.

Councilor Hemphill wondered if they ask for a legal opinion on this specific process. He said if staff is confident that they can get good proposals under the proposed timeframe, he felt they should move forward. If staff felt they can manage this without a real estate broker, he was fine with that.

Councilor Anderson said this is a complex project and they want to cast a wide net. He thought they wanted to reach out to developers across the country. This is a prime piece of property, with access to both major highways and 10 minutes away from Portland. They need to do this parcel justice. He was concerned with hiring a broker under the typical 3% fee. He wondered if they poll the top three brokers in the area and ask them how they would market it, and how they would charge the Town. He felt marketing this property requires a professional effort.

Councilor Farber asked how the Town would pay for a broker. Mr. Poore said they had an informal proposal from a local broker, who suggested a 3% fee based on the estimated construction cost to make the parcel developable, but that the fee would be the responsibility of the developer.

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Councilor King asked about the Town's capacity for marketing the parcel. Mr. Poore said the Town would pay for advertising in newspapers, statewide business publications, national development organizations, and have direct contact with close to 100 developers the Town is familiar with.

Chair Goldberg wondered what the trigger point would be for the conveyance of the broker fee; Mr. Poore said they would negotiate that with the developer. The other piece is the negotiating aspect; if they do not contract a broker, he would advise bringing in the Town Attorney to assist. He clarified that the Council cannot negotiate in executive session; they can only discuss their negotiating parameters.

Councilor Kitchel asked where they directly negotiate with a developer if not in executive session. Mr. Poore said the terms and conditions can be changed after they choose their preferred developer and after public comment. They are still changing the terms with Oceanview.

The consensus of the Council was that 1. They will review the proposals in executive session; 2. They will not use a real estate broker at the outset; and 3. They are ready to issue the RFP at the earliest possible time following an opportunity for public comment.

Councilor Farber would like some clarity from either the Town Attorney or MMA on the use of executive session in this instance, with some description of what they can and can't discuss in those executive sessions.

An order to issue the RFP and to authorize the Town Manager to execute the draft agreement was scheduled for January 25. Public comment will be taken at that meeting.

Item 7 Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider the disposition of real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).

Chair Goldberg amended the order to include "acquisition and disposition of real estate rights".

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

The Council entered executive session at 8:46 pm and did not return.

Respectfully submitted,

Melissa Tryon
Recording Secretary