

Town Council Meeting Minutes February 22, 2016

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

Roll Call

Councilors King, Hemphill, McBrady, Goldberg, Kitchel and Farber were present and answering roll call.
Councilor Anderson was absent.

Pledge of Allegiance

Chair Goldberg led those present in the Pledge of Allegiance.

Item 1 Public Forum

No one spoke at public forum.

**Item 2 (a) Order to approve the minutes of the December 14, 2015, Town Council
(Consent Agenda) Meeting.**

**Item 2 (b) Order to approve the minutes of the January 11, 2016, Town Council
(Consent Agenda) Meeting.**

**Item 2 (c) Order to approve the minutes of the January 25, 2016, Town Council
(Consent Agenda) Meeting.**

Councilor Farber moved the consent agenda, Councilor King seconded. Motion carried 6-0.

**Item 3 Report from Council Committees and liaisons regarding updates on
 assignments.**

Councilor King invited the public to a workshop next Wednesday, February 24, on proposed residential zoning amendments that the CDC has been working on for over a year. They will present recommendations based on the 2014 comp plan. The workshop is from 6:30 to 8pm in Council Chambers.

**Item 4 Report from the Appointments Committee and order relative to filling
 various vacancies on Boards and Committees.**

Councilor McBrady said there is one appointment recommended tonight. He said there are several vacancies and urged people to apply.

Councilor McBrady moved the appointment of Sue Raatikainen to the Human Services Committee;
Councilor Farber seconded. Motion carried 6-0.

Item 5 Resolution recognizing Bruce Rusk of Winn Road for his actions in saving the life of a man involved in a car crash on October 22, 2015.

Police Chief Ed Tolan said the Maine Chiefs of Police Association recently awarded Mr. Rusk their Life Saving Award. He discussed the events of October 22, 2015. Police were called to the scene of a car crash and found the vehicle in flames and the victim, the operator of the vehicle, 15 feet away. Mr. Rusk lives nearby; when he heard the crash, he went to investigate and found the man inside the vehicle. Mr. Rusk found the man unresponsive, and pulled the man from the vehicle at great personal risk.

Chair Goldberg read the resolution into the record.

Chief Tolan presented Mr. Rusk with a certificate of recognition from the Police Department.

Mr. Rusk thanked the Council and the Police Department for the recognition and the First Responders for their work that night.

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

Councilor Hemphill moved the resolution; Councilor King seconded. Motion carried 6-0.

Item 6 Order to accept Brookfield Road as a public street.

Town Manager Nathan Poore discussed the history of the project. While this road does not meet much of the Town's connectivity standards, it improves the condition of the dead end and would lead to riverfront open space that would be turned over to the Town as part of this acceptance. One of the complications with the project was the configuration of the open space; part of the open space is difficult to reach. The solution was to reconfigure the open space, which required an amendment to the approved subdivision plan. That amendment has been approved by the Planning Board, LMAC has rated this open space fairly high, and the project is ready for Council action.

Councilor King asked about public use of the open space and whether there is any parking. Mr. Poore said they can use the open space, and there is parking along the street.

Fred Chase, property owner, said the proposed right of way into the abutting property can be used for parking. It is 250 feet long and 50 feet wide. Part of it is paved and the Town will own it with this action.

Councilor Farber asked why the open space area at the curve of the road is included in this, and what the idea is for its use.

Mr. Poore said that this was a package deal; the Town did not agree to accept one piece of open space due to the inability to access it, but this piece was part of the package.

Councilor Farber asked if this was approved as a conservation subdivision; Mr. Fred Chase said it was. They had to include that as part of the ordinance requirements. He pointed out that the Town will have drainage rights down over that piece and that will be important.

Councilor King said it will still be a conservation subdivision. Mr. Poore said that is correct; the open space has to be preserved. In this case the majority of the open space will be owned and protected by the Town; the remainder will be owned and preserved by the homeowners' association. This open space is a large, contiguous piece with water frontage and it is beneficial to the Town to own it.

Amanda Stearns, Community Development Director, clarified that the value of open space in a subdivision is rolled into the valuation of the lots and not taxed separately.

Councilor Hemphill said he walked this property last year and it is a nice piece with a good, easy walk to the river. It is unusual for the Town to be able to acquire riverfront property like this. He thought it might lend itself to trail improvements.

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

Councilor King moved order 95-2016; Councilor McBrady seconded.

Councilor Farber asked about the 50 foot right of way; Mr. Poore said it is at the top of the subdivision plan.

Councilor Farber said this is a unique situation and valued the river access; that is the only reason she is willing to vote for it. She pointed out that the connectivity policy really speaks to connectivity of roads, and not access to open space.

Councilor McBrady thought there was an advantage to finishing the road off and having a cul-de-sac for emergency vehicles and plows to be able to turn around. The Town is lucky to get this beautiful piece of land.

Councilor King agreed with Councilor Farber; this is a good trade-off situation but doesn't fulfill the connectivity policy. She didn't want it to set a precedent.

Motion carried 6-0.

Item 7 Introduction of an amendment to the Zoning and Site Plan Review Ordinance to permit off-premise signs in the Business Professional District where egress to a lot is located off-premise.

Councilor McBrady said they spoke about this issue a few meetings ago; it impacts a business along Route 1 which is located away from the road. The entrance to the property is on a different lot, and a sign at that location is currently prohibited in this district.

Councilor King asked about sign limitations in the district.

Ms. Stearns clarified that the maximum sign square footage is limited; in a multi-tenant sign, the entire sign can't exceed the maximum allowed.

A public hearing was scheduled for March 28.

Item 8 Ordinance to amend 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 moved the ordinance; Councilor Hemphill seconded. Motion carried 6-0.

Item 9 Introduction of an amendment to the Zoning and Site Plan Review Ordinance to remove the sunset provision for minor site plan review, to amend the thresholds to clarify certain items, and to increase the maximum building footprint for any one application from 500 to 1,000 square feet.

Councilor Farber said that 2 ½ years ago the Council approved the original ordinance, which allows commercial and multi-family developments to do small project, up to 1000 sf in a 10 year period, with approval from planning staff instead of a full Planning Board review. The Council at the time wanted to evaluate the ordinance and so placed a 3 year sunset on it. That expires in August of this year. Town staff have issued a memo reviewing the ordinance. Staff and applicants have reported that the ordinance has worked well. Staff are proposing to remove the 500 sf limitation on an application, allowing an applicant to do the full 1000 sq ft allowed at one time, instead of having to come back twice. The cap of 1000 sf in any 10 year period is to prevent applicants from circumventing the Planning Board. Staff are also proposing a few clean up changes.

Chair Goldberg asked how many minor site plan applications were passed up to the Planning Board level.

Ms. Stearns said there was one; it had several issues including egress, intersection safety issues, and a loss of open space. Staff are comfortable working with projects that are very discrete and are not asking for any waivers or difficult interpretations of the ordinance.

Councilor Farber gave an overview of the type of projects that have used this process; they are typically 400-500 sf and include storage sheds and loading docks. These small projects often have low visual impact. She said the other reason to bump a project to the Planning Board is to open up the public input process.

Councilor King thought the footprints that would be approved under this provision will be bigger if the 500 sf size limitation per application is lifted. That will increase the visual impact of a project.

Ms. Stearns agreed that there are several projects in this list that would have been larger if they had been allowed to do the entire 1000 sf at one time. The process still applies any and all design guidelines and zoning changes to the proposed improvement, which will ensure that these structures complement the rest of the development.

Councilor Kitchel said this threshold is designed to speed up the process and make it easier for the applicant. Ms. Stearns said that is correct. The cost of review is the same but there is no requirement to notice abutters. The staff review process is the same.

Councilor King asked if this was designed so that the whole building would not be subjected to a full zoning review and upgrade to current zoning standards. Ms. Stearns said that is correct. Staff have found that property owners often want to upgrade certain elements, such as lighting, and if they do they have to conform to current standards.

Councilor Farber said this is about previously developed commercial and multi-family developments; the limit is 20% of the existing square footage or 1000 sf, whichever is less. An applicant couldn't take an existing 1000 sf building and double it, for example.

Ms. Stearns said only properties that have already received a Planning Board site plan review are eligible. If a property has not been reviewed previously by the Board it would have to go through the Planning Board process.

A public hearing was scheduled for March 28.

Item 10 Introduction of an amendment to the Zoning and Site Plan Review Ordinance Sec. 19-23.11 Master Development Plan Time Limits, in order to extend the Tidewater Master Plan Development District an additional six months.

Councilor Farber said the materials that the developer submitted were very late and lacking detail. The developer needs more time to meet the Town's requirements. It is in the Town's best interest for the master plan to be amended properly. Councilor Hemphill agreed.

Chair Goldberg said delivery of the documentation is the first step; he asked if this will happen in six months.

Ms. Stearns said the subcommittee is meeting this week to review the documents and send back comments to the developer. She thought there would be several communications back and forth.

A public hearing was scheduled for March 28.

Item 11 Discussion and possible Order for the approval of a consent agreement for the violation of setbacks at 20 Preservation Drive.

Ann Freeman, attorney for the applicant Dale Bragg Builders, said the Zoning Board unanimously approved their mislocated dwelling appeal on January 26. She said the parcel is lot 2 of the Foreside Woods

Subdivision, which abuts the Falmouth Forest Preserve. This subdivision was approved in 2001 and this is the last lot to be built. The building permit was issued in July 2015. The building company hired Dave Chase Excavating to dig and set the foundation. Mr. Chase proceeded in his customary way; nothing in the construction was concerning in regards to the setback. The house was set back 23 feet from each property line, 3 feet within the allowed 20 foot setback. In December 2015, once the home was mostly complete, the bank came out and did a routine survey. It was this survey that uncovered the encroachment. The garage is 3.2 feet into the setback at the northeast corner, and the 1.8 feet in the setback in the back corner. This is about 55 sf of total encroachment. Mr. Bragg and Mr. Chase came to the Code Office immediately to try to find ways to correct the issue. They tried to acquire land from the abutter and move the property line back, but that failed. She is aware that a penalty is possible, and asked that the penalty be reasonable. Mr. Chase acknowledges that there was a mistake here; he measured where the foundation should go three times. The property line cants, and is not 90 degrees. This impacts a small slice of property. The affected abutter testified at the BZA hearing and supported the appeal. There is a significant landscaping plan that will be installed along that property line as a buffer. She reiterated that Mr. Bragg and Mr. Chase did not do this intentionally and feel horrible about it.

Chair Goldberg felt it was clear that this was a mistake and requiring them to tear down and rebuild the house is excessive.

Councilor McBrady agreed that it was a mistake. He supported a fine to cover the Town's legal costs; he didn't want to do any more than that. Councilor Farber agreed.

Chair Goldberg opened a public comment period.

Fred Chase testified to the character of Mr. Bragg and Mr. Chase. This was caused by the angle of the property line.

Councilor King wondered if there is customarily a buffer they leave when they blast. She wanted to know how easy it is to make this type of mistake and is there a way to avoid this problem.

David Chase said it was completely his fault. He was the original developer of the subdivision. It was a long approval process, and it was very specific as to the protections of the buffers. He laid out the house three or four times, and can't explain how he made this mistake. He said there was no advantage to him messing this up.

Public comment period closed.

Councilor King asked if there is anything the Council can do to prevent this happening in the future.

Mr. David Chase said Portland requires a surveyor to pin the site, but most sites in Portland are much tighter. He has seen projects pinned by surveyors that have been done wrong too. These things happen.

Councilor Kitchel said that, given Mr. David Chase's history in Town and that there was no intent to do this in order to accommodate the building on this site; he was in support of this.

Councilor Hemphill agreed that there was no intentional shift on the building. People make mistakes. If the abutter and the homeowner have an agreement, the Council should allow this to move forward with a minimally punitive fine.

Chair Goldberg spoke about setting penalties. While every situation is different, and flexibility is valuable, he felt the Council should have some kind of policy around this. At some point the Council may find itself with an application in which there was malice.

Chair Goldberg moved the order, with a penalty of no more than the town's legal costs; Councilor Farber seconded.

Mr. Poore asked if this is a Class A boundary survey; Mr. David Chase said the bank survey uncovered the problem and then they hired a surveyor to confirm.

Councilor Kitchel asked if the bank survey happened at the closing of the construction loan.

Andrew Golden, property owner, said the bank survey happened at either the second or third draw request. Construction started in late July; they didn't catch the error until late September.

Councilor Kitchel wondered if the bank was negligent in not doing their survey prior to the foundation being poured.

Mr. Golden didn't know; he is inexperienced in building homes. When he received the bank's phone call he immediately called Mr. Bragg, who looked into it right away. Mr. Bragg and Mr. David Chase were horrified when they discovered the error. Mr. Golden was surprised that the bank waited so long to do the survey.

Councilor Kitchel felt the bank was lax; he has seen that happen before and felt they could have done something differently.

Councilor Farber supported Chair Goldberg's suggestion on a policy regarding penalties for those situations that are not so clear. She said this is zoned RA and is not resource conservation. If the proposed zoning amendments pass next year, this would be within the suggested side setbacks and may become a non-issue.

Motion carried 6-0.

Item 12 Discussion of a proposed Conflict of Interest Policy and notice of a vote, to be held at the March 14, 2016 Council meeting, to amend the Council rules in order to incorporate said policy.

Councilor Farber expressed her thanks to the subcommittee that drafted the policy. She said it is well considered.

Councilor Kitchel was comfortable with the proposed policy.

The Council discussed the wording of the paragraph, which states: *Councilors are required under this Policy to disclose any potential conflict of interest they may have in any agenda item before the Council. Once a disclosure is made, the Councilor shall either abstain from the decision making process (including any discussion, deliberation or vote).* They suggested changing it to "*(including any discussion, deliberation and/or vote)*" for clarity.

Councilor Farber was interested in the opinion of former councilors; she encouraged them to send their comments and opinions on the policy.

The vote was scheduled for March 14, 2016.

Item 13 Discussion about the future use of property owned by the Town of Falmouth and located next to Underwood Park on Route 88.

Chair Goldberg gave a brief history of the property; the Town acquired it with the thought of adding satellite parking for Town Landing and demolished the derelict home on the lot, but the public didn't support the parking plan. The plan was abandoned and nothing has been done with the lot since then; it is currently vacant. The lot is still zoned for residential, and is now surplus property.

Councilor Farber was grateful for the background on the public input process in 2009. She was concerned with the lot not being part of anything. She wondered if it was in the Town's interest to take some of it and sell it as a house lot, and add some of the land to Underwood Park. She thought it will be more difficult to sell it the longer it sits vacant. She has been thinking about the value of open space in the growth areas, in light of the upcoming ordinance changes. She wondered about a new public input process.

Councilor King thought there might be other possibilities that might arise for this lot. In light of the upcoming ordinance changes, she wanted to slow down the discussion on this. Some other possibilities might arise for the property. She suggested tearing down the fence and cleaning up the property for safety.

Councilor Kitchel said this is very slow already; this is a 4 year old report and has a lot of information. Fiscally, if they sold one lot on the front they would likely get \$300,000 - \$400,000 for a full acre. The tax revenue from that would likely be \$10,000/year. There is significant financial benefit to the Town. On the other hand, he lives just down from this and he likes it empty. It has a nice feel to it; nothing has been done to it. He was interested in keeping it as is. He said the current playground is inadequate; he would like to see a master plan for Underwood Park and see it maintained. It links up to the Nature Preserve in the back.

Councilor Hemphill said he has heard from several residents that enjoy having it there. The initial intent for the lot has faded. With increasing pressures of development, having easily accessible open space is significant.

Councilor McBrady felt this would go hand in hand with the proposed zoning changes. He would be interested in some public input on the property.

Councilor Farber wanted to understand the connectivity potential from this property, what it connects to and where in the back. Councilors Goldberg and Hemphill discussed the pedestrian connections, both formal and informal, linking the cross streets to Underwood Park.

Chair Goldberg summarized the options: do nothing, add it to Underwood Park, or sell it for one or more house lots. He pointed out that proceeds from a sale could reestablish the parks fund.

The Council discussed next steps, including when to solicit public input. Chair Goldberg wanted to move this forward fairly quickly in order not to miss the market if they do decide to sell it.

Councilor King felt they should be careful in preserving park space; they shouldn't trade this for park space elsewhere in town.

Councilor Farber suggested referring this to a Town committee, either PACPAC, LPAC, or both, to review the available data and distill it. Perhaps the committee could first determine what the Town could use it for if they kept it.

Councilor King would like to find out what is important to people about this property, and then go from there.

Mr. Poore suggested a process of two facilitated forums; one for stakeholders including PACPAC, LPAC, and the Council, and the second for the general public.

Chair Goldberg suggested a Council subcommittee to meet and propose a process.

An order was scheduled on March 14 to establish a Council subcommittee.

Item 14 Order to schedule a public hearing on Monday, March 28, 2016 at 7:00 p.m. regarding;

- **proposed amendments to the West Falmouth Crossing Tax Increment Financing District, and**
- **the June 14, 2016 referendum question authorizing \$6,500,000 of the Town's Bonds to finance a portion of the cost of the Route 100 Infrastructure Project to be supplemented by funds provided by the Maine Department of Transportation and funds from the West Falmouth Crossing Tax Increment Financing District.**

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

Mr. Poore said the only charter required public hearing for the referendum will be on April 25. The TIF amendment requires a public hearing prior to submittal of the application. Staff felt that an extra public hearing on the Route 100 project would be valuable.

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

Adjourn

Councilor Farber moved to adjourn; Councilor Hemphill seconded. Motion carried 6-0.

Meeting adjourned at 9:15 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary