

Town Council Meeting Minutes July 25, 2016

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

Roll Call

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

Pledge of Allegiance

Chair Farber led those present in the Pledge of Allegiance.

Item 1 Public Forum

Kathy Shaw of Auburn, the president of the Cumberland Farmers Market Association, thanked the Council for making the market feel welcome and looked forward to working with staff on ordinance language to allow them to continue to operate in the Route 1 corridor.

Item 2 Order to approve the minutes of the June 20, 2016, Town Council (Consent Agenda) Organizational Meeting.

Councilor King moved the consent agenda; Councilor McBrady seconded.

Councilor King made an amendment to the minutes.

The amended minutes carried 6-0.

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

Councilor King reported that the Library held a kickoff event for public fundraising in June. They will be organizing a number of neighborhood events to fundraise and educate the public about the expansion.

Councilor Hemphill said the Tercentennial Committee met on July 13; they are grateful for the appropriation from the Council.

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

There was no report.

Item 5 Public Hearing and Order on a victualer's license application for a vendor participating in the Cumberland Farmer's Market Association.

Chair Farber opened the public hearing.

Kathy Shaw of Auburn, the president of the Cumberland Farmers Market Association, spoke in support of Gene Weir, a founding member of the market. All the members of the market support him 100%. She asked the Council to do the same.

Public hearing closed.

Councilor Kitchel moved the order; Councilor King seconded.

The Council discussed Mr. Weir's criminal history and how it might impact this approval. Chair Farber felt that they did not have the right to deny this application, since the applicant has served his time and has no restrictions placed on him as a result of his crime. Councilor Ferrante said it meant a lot to her that he had the support of the people he works with.

Motion carried 6-0.

**Item 6 Presentation from the Community Development Committee (CDC)
of an outline for enabling legislation for contract zoning.**

Councilor King said the CDC drafted the outline as requested by the Council. In order for them to move ahead in completing the language, they need some feedback from the Council. She said contract zoning would be another tool for the Town. It would provide a creative and flexible approach for projects that don't quite match existing zoning. The contract zone has to adhere to the underlying zone's existing permitted and conditional uses. It is a site- or project-specific contract that outlines the requirements and interests of the town as well as that of the developers. It is not a new zoning district, nor is it "spot zoning". She spoke about the benefit of the procedures that would be laid out to create an efficient system for staff, and said this is used by other towns in the area. She spoke about the proposed process, which would require staff and Planning Board review before Council review and approval. The CDC is looking for feedback from the Council on three areas. 1. Applicability: the CDC is suggesting applying this to the residential growth areas first; they have not investigated applying it to the commercial areas. 2. Concept review: whether the Council is comfortable with the CDC doing the concept review and findings for a proposal. 3. Planning Board Review: whether the Council is comfortable with the Planning Board holding their review prior to the Council's review. The CDC has also sent this to the Planning Board for feedback.

Councilor McBrady spoke in favor of the Planning Board's role in the process as proposed.

Chair Farber suggested the CDC hold a workshop with the Planning Board to get their feedback.

Councilor Ferrante didn't understand why they were limiting this to the residential growth areas. Councilor King said this is a new theory for the Town, and they felt they should introduce it first in these areas, evaluate it, and then perhaps expand it later. The VC zones are very specific, form-based zoning and they want to see it used as written.

Councilor Ferrante asked what other towns do. Ms. Stearns said most towns allow it town-wide; Freeport restricts it to the commercial districts only. She didn't do a comprehensive study of all towns in the area; most use it to some extent.

Councilor Ferrante would like to see it extended town-wide. She thought the concept review and findings would be done by staff and not a sub-committee.

Community Development Director Amanda Stearns said it is done differently in different towns. There is some subjectivity in the basic findings, whether the project meets the comprehensive plan for example, and those would be better done in committee rather than by staff. CDC is an arm of the Council, the body that will ultimately approve or deny the application, and they are the Council's land use experts.

Councilor Kitchel said this is being fast-tracked because there is a developer with a pending project in a residential district that cannot proceed with a formal application. Trying to add additional districts to this now will slow the process down.

Ms. Stearns discussed some of the details that the CDC is still working out, including the difference between submitting an application and introducing an item to the Council.

Councilor Kitchel asked if the contract zone would be subordinate to the underlying zoning. Ms. Stearns said it is complicated, since the contract doesn't change the underlying zoning of the property, but lays out certain exemptions allowed to the property by the Council. Where those particular variations are specifically laid out, it is not subordinate to the underlying district, but all the other pieces of the development would be subject to the underlying zoning.

Chair Farber asked how the proposed fees compare to other towns, as well as other Town applications. Ms. Stearns said other towns have a wide range of fees. They reviewed the Town's current fee for conditional rezoning for personal wireless facilities (\$500) and the current pre-app/sketch plan review fee charged by the Planning Board (\$250). These types of applications require a similar amount of review and staff work, so they used those fees.

Chair Farber liked the conceptual review being held at the CDC level because that would be a public process, but observed that it would be time-consuming for them. She wondered about a special committee, drawing from both CDC and Planning Board, to review these applications. She thought they should think about expanding this to other districts, either now or in the future – it wouldn't be that hard. She liked the early role of the Planning Board in the process.

Councilor Kitchel thought the CDC could handle the review process; they only expect a couple of these a year. This way the committee could have first-hand knowledge of how the ordinance is working. He asked about adding other districts.

Ms. Stearns said it would be easy to add districts to the allowed list; the question is whether they should take some time to review the possible effect of allowing variations in the commercial districts.

Councilor King said she didn't want to extend this to VC, and she would like the current discussions and proposed changes to the Route 1 North and Route 100 districts to take place and see how they work before allowing this in those areas.

Chair Farber wouldn't support expanding this to VC. She felt the situation is different with the Route 100 area. She pointed out that what is proposed addresses the areas that they have been asked to address. These are the areas that have been subject to master plans and zoning amendments in recent years.

The Council agreed that the CDC should proceed with the process of drafting language. The CDC will meet on July 26 and August 2 and plans to introduce language to the Council on August 8.

Item 7 Order to accept the Public Water System Study for Falmouth prepared by Wright-Pierce.

Director of Long-range Planning Theo Holtwijk said this project was done in collaboration with the Portland Water District and Wright-Pierce. This study was driven by the upcoming reconstruction of Middle Road and also because pro-active utility planning in the growth areas is recommended in the comp plan. The study examined whether there are limitations in the water system to serve infill development, whether there are areas in the growth area that are not served by the existing water system, and what conceptual water service plans for unserved areas might look like. Wright-Pierce examined the current water system for adequacy, its maintenance and capital needs, and the infrastructure that might be required to serve all of the growth areas. They report that only three sections of the town's growth areas do not have public water. Fire protection in the growth areas is excellent, and extensions of the water mains will not impact it. Infill development will not

impact service to current customers. The three sections currently unserved could be served by the PWD, and the report identifies the infrastructure needed to do that. He discussed the details of each of those possible expansions, including cost. The explored the possibility of a USDA Water System Loan/Grant, but Falmouth is not eligible since those are only available for towns with a population of less than 10,000. Staff concluded that the growth area is in great shape, that no town-funded construction is recommended at this time, and that the study will be helpful to assess future work.

Chair Farber opened a public comment period.

David Gagnon of Field Road spoke in favor of the study. He was pleased about the effort to do long-range planning.

Public comment period closed.

Councilor King moved to accept the report as presented; Councilor Hemphill seconded. Motion carried 6-0.

Item 8 Resolution authorizing Town staff to seek members for an informal bicycle-pedestrian stakeholder group and commence implementation of the 2016 Falmouth Bicycle and Pedestrian Plan through the recommended actions for 2016-2018.

Town Manager Nathan Poore mentioned that the Maine Association of Planners recently gave this the Planning Project of the Year Award. There are layers of planning and implementation, so this will be an evolving project over the years. The Council will review this several more times as they work through each item in the plan and make decisions on funding. Staff plans to meet with the stakeholder group this fall to get them to weigh in on the plan as it is refined.

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

Councilor Kitchel asked if there are grant monies available for any portion of the implementation; Chair Farber thought there was in a couple places, for ADA-accessible trail work for example. Mr. Holtwijk said there are several items that could be grant funded, or partially grant funded. They have reviewed those opportunities with various staff members.

Councilor King asked how the stakeholder group would be formed and what its function would be. Mr. Holtwijk said the group would meet a few times a year to provide a place for staff to discuss the projects they plan to do, get feedback on the projects that have been completed, and to help staff prioritize the projects. The group can also help staff communicate the Town's efforts back to the community. Staff plans to cast a wide net to invite people to attend these stakeholder meetings. A continuity of participants would be helpful. If they struggle to have people return, they might come back to the Council to ask for an appointed committee.

Councilor McBrady moved the resolution; Councilor Ferrante seconded. Motion carried 6-0.

Item 9 Order to conditionally accept several conveyances of open space property and easements from the Harriman Subdivision.

Mr. Poore said this is a straight-forward request for a small subdivision being proposed off Field Road. The developers propose to turn over the open space for this to the Town. The open space abuts other existing portions of open space as well as Community Park. There are planned trail easements as well as bicycle and pedestrian access across the private road. LMAC has reviewed and endorsed this project. Staff and the Town Attorney have reviewed this as well; there are some conditions that still need to be met and are included in the order. The developers have agreed with the proposed conditions. The Town Attorney felt the Council

could review and approve this even with the long list of conditions; if there are substantive changes they will return to the Council. One of the conditions is Planning Board approval of the project.

Chair Farber opened the public hearing.

Keith Smith, agent for the applicant, said the application needs this Council approval before they can proceed with their Planning Board approval process. This is in a great location, directly adjacent to Community Park.

Dave Gagnon of Field Road, a member of LMAC, said the Committee voted to recommend this project with some stipulations and he isn't sure those have been met. They requested a secondary easement behind lot 3 as well as access for maintenance equipment to keep the property bush hogged.

Mr. Smith said the secondary easement is on the plan.

Chair Farber closed the public hearing.

Mr. Poore said the LMAC vote didn't have those stipulations included.

Councilor King asked why one of the easements is 50 feet wide, if it is only for bikes and pedestrians. The other one is only 10 feet wide. She wondered if that easement would have any implications if that was going to be a public street at some point

Mr. Smith said the 50 feet is the right of way for the road; that easement grants pedestrians and bicycles access over the whole right of way. The other easement is just for bikes and pedestrians.

Mr. Poore said this is unlikely to be a public street; there is no connectivity and it is a small, dead-end subdivision.

Councilor King asked if there could be another trail on the land that is being conveyed to the Town; Mr. Smith said that there is currently a trail and that will be included in the open space that is being conveyed. There are no restrictions on the property.

Councilor Kitchel asked what is going on with lot 3; Mr. Smith explained how lot 3 is designed. There will be a driveway that connects it to the road.

Chair Farber asked why the Town will hold the easements instead of the Land Trust; Mr. Poore said this is an outright conveyance of the land to the Town. The trail easement will be held by the Town. There isn't much stewardship that will be required, so LMAC and the Town can care for the trail.

Chair Farber asked about the maintenance access requested by LMAC. Mr. Smith said they don't want to restrict maintenance of the site. The goal of retaining open space is to keep the rural character; the understanding is that LMAC will go in and mow that once a year to keep it open. They have no reason to keep the Town from accessing the property. They will have to look at the details of how it is graded to see how they can get in there. The stormwater buffer needs to be mowed twice a year, so there will be a way, presumably through the right of way, for equipment to get in there. They can add that to the final language.

Chair Farber asked if they needed to add that to the order. The Council and Poore discussed how to insert that into the language. Councilor King pointed out that language about motorized equipment is included in the easement deed, but it is only permitted within the 10 foot pedestrian easement. Chair Farber felt they should include it in the order. The Council added language to the draft order to allow for mechanized equipment to access and maintain all property conveyed to the Town.

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

**Item 10 Order to approve and adopt the updated Town of Falmouth
Emergency Operations Plan dated July 1, 2016.**

Fire Chief Howard Rice gave a presentation of the updated Emergency Operations Plan (EOP). It is updated every year, but in the past two years they have reviewed the plan with Cumberland County in order to streamline and condense the plan, to make it easier for someone to use it in the event of an emergency. The original plan was adopted in May, 2008. They have worked with the schools, nursing homes and now have written plans for every day care center in town. They have helped created EOP's for the Library, Hockey Rink, and Portland Yacht Club. They have helped with various trainings including CPR, extinguisher and EOP trainings. The next step is to reach out to commercial entities in town. He discussed each of the sections of the plan.

At Councilor Ferrante's question, Chief Rice said they will go out to any business or organization that wants them to do training. They have to charge for the books for CPR training, but otherwise training is free; they want to get out in the community.

Chair Farber asked who sees the plan other than the Town; Chief Rice said the County sees the plan and has offered good feedback. One of the local day cares sent copies of the plan out to other regional day cares as an example. They are one of the first towns in the area to reach out to the local businesses.

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

There was no one present for public comment.

Item 11 Order to vote for MMA Legislative Policy Committee Members.

Councilor Ferrante moved the order; Councilor Hemphill seconded.

Chair Farber opened a public comment; there was no public comment.

Motion carried 6-0.

**Item 12 Order to vote for MMA Vice President and Executive Committee
Directors.**

Councilor Hemphill moved the order; Councilor King seconded.

Chair Farber opened a public comment; there was no public comment.

Motion carried 6-0.

**Item 13 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).**

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

The Council entered executive session at 9:54 pm and did not return.

Respectfully submitted,

Melissa Tryon
Recording Secretary