

Town Council Meeting Minutes September 26, 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 arrived late.

Pledge of Allegiance

Chair Farber led those present in the Pledge of Allegiance.

Item 1 Public Forum

Mike Doyle of Shady Lane spoke about his complaint against Mr. Poore regarding costs associated with a FOIA request he filed several years ago. He has not received a response from the Police Department. He complained that the Harbor Committee meets at the Police Department behind locked doors; the Council has held their retreat there as well.

Item 2 (a) Order to approve the minutes of the August 8, 2016, Town Council (Consent Agenda) Special Meeting.

Item 2 (b) Order to approve the minutes of the August 22, 2016, Town Council (Consent Agenda) Meeting.

There was no public comment.

Councilor Hemphill moved the consent agenda; Councilor McBrady seconded. Motion carried 7-0.

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

Councilor King said REAC is working on an energy plan, an update of the Green Ribbon Commission; they hope to have it ready by the beginning of 2017. Falmouth has tied for first in the region for recycling rates for the second year in a row.

Councilor McBrady said the Route 1 North Committee has met three times and has toured the corridor. They have discussed the RFP process and are considering holding a charrette with people that live, work and commute in that area. Their next meeting is 10/17. The RFP has been issued and is due soon.

Councilor Hemphill said the Tercentennial Committee is meeting tomorrow with a consultant to work on branding and a logo.

Chair Farber said there is no Council meeting the week of October 10. The next meeting will be October 24.

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

Councilor Svedlow said they have done a number of interviews. For the Harbor Committee they selected a candidate based on qualifications and length of time on the waiting list.

Chair Farber moved the slate of appointments; Councilor McBrady seconded. Motion carried 7-0.

Item 5 Order to authorize the Town Manager to execute a quit claim deed for Map R04, Lot 068 Block 030.

Town Manager Nathan Poore explained that this is a method to settle back-due taxes.

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

Councilor Kitchel moved the order; Councilor McBrady seconded. Motion carried 7-0.

Item 6 Public Hearing and Order to approve a new victualer license for Rivalries Falmouth, LLC.

Lance Meader, owner of Rivalries, said the new restaurant on Hat Trick Drive, behind Walmart, has been approved by the Council and Planning Board for this construction and use. This is the final step before he can receive his licenses to operate from the state.

Chair Farber opened the public hearing.

Bob Isler of Farm Gate Road spoke on behalf of the Tidewater Homeowners Association (HOA). Rivalries' application states a proposed closing time of "as late as" 1:00am. In approving this project, the Council amended the Tidewater Master Plan to allow a restaurant use on this site. This changed the originally intended use of this gateway site to a quiet, planned neighborhood development. He was concerned with noise, traffic and headlights. There is no other restaurant this close to a housing development in town. The Falmouth Tavern is closed by 10pm every night. In previous meetings, the owners of Rivalries have stated that they would not be open this late. He asked the Council to adopt a non-vague, 10 or 11pm closing time for this restaurant.

Chair Farber closed the public hearing.

Councilor Svedlow asked if this license requires a closing time.

Chair Farber said the other restaurants that are similar to this one in Town have specific licensed hours. All are licensed to close at or before 11pm.

Councilor King asked what this means with regards to service. Chair Farber said this is about food only and she thought that, as long as they are open, there are capable of serving. Mr. Poore confirmed that was correct.

Councilor Kitchel thought this license is essentially a contract stating that they won't operate after a certain hour. If the Tavern was open until 1am it wouldn't have as much impact, since they are not near a residence. He felt a closing time of 11pm was reasonable in this case.

Councilor Ferrante asked if the businesses referenced set those closing hours; Chair Farber didn't know.

Chair Farber thought the Council's job in granting the license would be to set the time.

Councilor Ferrante was concerned for the residents in the area. She wouldn't like to live that near a bar either. She wanted to hear from Rivalries on this issue.

Councilor Hemphill said this license is granted for one year; it is an annual renewal. They could re-evaluate it at that time.

Chair Farber pointed out that the victualer license could be for one set of hours, and the liquor license could have different hours.

Councilor Svedlow said that they are making a decision about someone's business, and there could be an economic impact to that. He was also considerate of the residents' concerns.

Mr. Meader felt the restaurants put their chosen service hours on the food service license application. State law requires that food be served as long as the business serves alcohol. In Portland, they serve food until 11pm; they will continue to serve as long as people are there, but it clears out around 11. They are a sports-based restaurant and if games are on the west coast they can run late, and he might have to close before the game was over if it was limited to 11. It is a rare occurrence, but it happens. The ice arena is open very late some nights and they are near the residents too. The area was developed as mixed-use; it was intended to include commercial uses. The recession hit after the homes were built, but before the commercial development came in; the homeowners got used to their quiet neighborhood. All the property surrounding this is zoned to allow restaurants; it was always planned for restaurant use in this area. There is only one house that can see them; they are putting up trees and fencing, and are built as far away from the homes as possible. They are not a late-night place. The late nights will be for the occasional west-coast or playoff game. This is a huge issue for his business. He didn't think they would have a huge impact on the homes.

Councilor Ferrante asked if they have live music; Mr. Meader said they do not. It's just sports.

Councilor Svedlow asked if they have outdoor seating; Mr. Meader said they do have a patio.

Chair Farber asked if they can limit the hours of the outdoor seating; Mr. Poore said they could.

Chair Farber asked if they had TV's outside; Mr. Meader said they do in Portland. He felt that might be a concession he could make.

The Council discussed the application and the operating hours. Councilor McBrady and Councilor Hemphill suggested they approve it as is and revisit it when the license comes up for renewal. The Council approved the use knowing what it is. Councilor Svedlow agreed. Councilor King asked about restricting patio hours. Councilor Ferrante felt the outside hours should be limited to 11pm. Chair Farber wondered if the parking ban would counter this; that would dissuade people from going out onto Farm Gate. She didn't want to allow outdoor seating until 1am.

Councilor Kitchel asked how many spaces are on the street; Mr. Meader said there are 9 spaces on Farm Gate. Chair Farber said there is parking on Hat Trick and Clearwater.

Councilor Kitchel asked about if the outdoor seating would have a TV; Mr. Meader said he would like to. In response to Councilor Hemphill's question, he confirmed that the outdoor seating is on the Walmart side.

Councilor King pointed out that, without limits, people could stay outside until 1am even if there wasn't a game. Mr. Meader said his experience is that the outdoor seating in Portland is very quiet.

Chair Farber felt there was a difference between the Portland location and this one; the neighborhood is different. It is quieter here than in downtown Portland.

Mr. Meader was concerned about the logistics, if the interior is full and they have to move all the outdoor people indoors at 11pm.

Councilor Kitchel moved to approve the application; Councilor McBrady seconded.

Councilor King moved to amend the application, restricting the outdoor patio hours to 11pm. Councilor Ferrante seconded.

Amendment failed 3-4 (Kitchel, Hemphill, McBrady, Svedlow)

The Council discussed the application; Councilor Ferrante was concerned about the neighbors, Councilor Svedlow didn't want to address an issue before it is a problem. Councilor Hemphill felt the owners are aware of this as a potential issue when it gets revisited.

Original motion carried 6-1 (Farber).

Item 7 Public Hearing and Order to approve a new liquor license for Rivalries Falmouth, LLC.

Chair Farber opened the public hearing; there was no public comment.

Councilor Kitchel moved the order; Councilor McBrady seconded.

Councilor King asked about the hours; Councilor Hemphill said they are the same as the previous license.

Councilor King moved to amend the order, limiting alcohol sales to midnight. There was no second.

Original motion carried 6-1 (King).

Item 8 An update from the Senior Committee and an order to amend the committee's charge.

Delores Vail of Field Road introduced the committee and discussed the work they have done to date.

Jen DeRice of the SCAC gave a presentation of the committee's goals and work since their creation in March 2015. The committee gave a report in September 2015 with five recommendations. The first was the creation of a senior center at Mason/Motz, including a kitchen, comfortable furniture, and access to the Town Green. The second recommendation was to add senior programming to the current offerings from Community Programs. The third recommendation was to develop a volunteer transportation assistance network; this comes directly from the data they received from a survey they did last year. Their fourth recommendation is to hire a part-time senior services coordinator. Their fifth recommendation is to extend the term of the committee; they have done a lot of work, but have only scratched the surface of the needs of seniors in the community. They are requesting that their term be extended until September 2017. All these recommendations are consistent with the comp plan and with the results of their survey.

Ms. Vail said they are looking forward to the senior center. She said the committee needs volunteers – they could be any age.

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

Councilor McBrady congratulated the committee on their great work on the senior center.

Councilor McBrady moved the order; Councilor Ferrante seconded. Motion carried 7-0.

Item 9 An update from the Senior Committee on the proposed Senior Center and an order to approve a supplemental appropriation and transfer in the amount of \$75,000 from Unassigned Fund Balance to finance the construction.

Mr. Poore presented the proposed design plans. Last year, the Town put a placeholder of \$75,000 in the current year's budget for this project, since they didn't have a good idea of how much it would actually cost. The Town received generous assistance from Port City Architecture to help them design and price out the construction. Originally they planned to leave the existing masonry wall; the current design would remove that wall, opening up the room and allowing for the installation of a bar-type table at seating height. The window would be converted to an exit door to access the Town Green. The seating is living room type chairs that are movable, stackable and foldable. There is also a storage room in the back. Staff are recommending to

use a general contractor familiar to the Town on an hourly basis; he would use sub-contractors the Town uses already. Mr. Poore reviewed the cost breakdown prepared by staff. The furniture is an expensive item, but these are commercial grade chairs that are easy to keep clean and to maintain. He spoke about committee and staff efforts to meet code requirements and also keep costs reasonable. The total for the project, including contingency funds, is \$150,000. He said, if they want to do this project this way, it couldn't get any cheaper.

Councilor King asked what it means to not go out to bid with a project this big.

Mr. Poore said the Town is supposed to go out to bid with any project above \$20,000. Staff felt that, based on their experience with previous projects, they are not going to get anything better than this if they go out to bid. In hiring the construction manager as proposed, it is like they are extending staff. He could put this out to bid if the Council would like, but it would push this project off several months.

Councilor McBrady asked if the sub-contractor numbers were placeholders and would be bid out, or if they have subs already in mind.

Mr. Poore said they could do it that way; the numbers in the list are actual quotes they have received.

Councilor McBrady felt it wouldn't hurt to get additional bids on the higher items.

Matt Crowley, construction manager, clarified that he has 2 or 3 numbers on everything. None of this is based on one bid. Most of it is based on contractors the Town has already used.

Councilor King asked if there are any entities in the community that might want to contribute to the project, perhaps for naming rights.

Mr. Poore said the Town has a naming policy which would require an extremely large donation. The committee has discussed donations a little in the past, but it hasn't materialized more than that.

Ms. Vail said they have discussed it but they didn't have the final numbers, so they didn't know what they needed. Now that they know, they could go out and ask. There won't be any naming, but people could donate the same way they donated to the Veterans' Memorial. She did hope they could go that route.

Chair Farber encouraged any businesses that could contribute their services to contact the Town.

Councilor Ferrante would rather see projects go out to bid, but would support this project considering its importance to the community.

Councilor McBrady moved the order; Councilor Hemphill seconded.

Councilor Hemphill felt that, even though it is a significant increase to original estimate, it will be a significant contribution to the community.

Chair Farber appreciated how far along this is. She appreciated that it is generalized enough to still be useful, if senior services were to be moved somewhere else sometime in the future.

Motion carried 7-0.

Item 10 Update from the Falmouth Memorial Library Board of Trustees regarding fundraising efforts to help fund the renovation and expansion of the library building and an order to amend the previously approved memorandum of understanding (MOU) between the Town and the Library, dated September 22, 2014, changing the required date for the Library to conclude its fundraising from December 2016 to December 2017.

Marsha Clark, president of the Library Board of Trustees, said they are about halfway through their final design and development. They are where they need to be, given where they are in fundraising. They have

raised more than \$1.3 million toward their goal of \$2.8 million. Their donations have come from grants, foundations, businesses, business owners, families and individuals. The capital campaign committee launched a kickoff event in June, hosted in-home parties, and is hosting a gala on October 29. Library staff have been working hard to help the Board meet their fundraising goals with different events, author lectures, and an auction. There is a musical event scheduled for this weekend, another author evening in a couple weeks, and a fun event around Thanksgiving. She said they are founding a 1718 Society for those who pledge \$3000. While they are encouraged about their progress, they feel they are running out of time. The MOU states they have until December 2016 to meet their fundraising goal. The Library hired a fundraising counsel to help them with their goal after the referendum passed. There was a staffing change at the firm, and they did not receive the help they needed. They hired a new consultant midway through the process, and while this new company has been very helpful, they are just now getting their momentum back. As a result, they really only got started in January of this year; they have raised most of their funds since then. The community wants them to succeed. She asked the Council to modify the MOU to grant them an extra year to meet their fundraising goal. She has met with fundraising counsel; they have modified their plans so that they can still support the Library Board and not increase their costs. The plan was to open in 2018; even with this extension, they can still open on time. Their goal is to open on November 11, 2018, the anniversary of the Town's incorporation, and Veterans' Day.

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

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

Item 11 Order to approve a supplemental appropriation and transfer in the amount of \$1,000,000 from the Wastewater Enterprise Fund to finance a portion of the costs to replace the Mill Creek pump station and install force sewer mains.

Chair Farber pointed out that the enterprise fund is a separate fund; it is funded by sewer fees and not property taxes.

Mr. Poore said the Council has discussed using \$1 million from the Wastewater unassigned fund balance, and not general unassigned fund balance. He pointed out that, even using this \$1 million, the total fund balance would come back up by 2020. This proposed use would mitigate the impact on sewer fees. This has been discussed generally in past meetings, but was tabled until final numbers came in. This project doesn't have a lot of contingency funds and some of those have been used already to address a ledge issue, but they feel they are over the hump on that.

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

Councilor Kitchel moved the order; Councilor King seconded.

Councilor King pointed out that this will save a lot in interest fees.

Motion carried 7-0.

Item 12 Order to approve a supplemental appropriation and transfer in the amount of \$42,000 from Unassigned Fund Balance for the cost of lighting upgrades and parking improvements at the Plummer/Mason-Motz property.

Mr. Poore discussed the proposed lighting plan. Oceanview is going to install a very large underground propane tank and the Activity Center will have a line off that tank. The Town will benefit from Oceanview's bulk pricing for propane as a result. The Town will also benefit from the improvements Oceanview is planning for the Plummer property. Oceanview agreed to make the area around the tank pavement-ready

once it is installed; they are ready to do that now, instead of next spring as staff expected. They are also ready to order all the lighting fixtures for the Plummer property. They are very attractive lights. Staff had asked Oceanview to notify them when they were ready to order lights, since the Town has had complaints about the lighting on the Mason/Motz property. In order to take advantage of Oceanview's procurement process and installation, they would need to move forward with this now.

Councilor Svedlow asked if the cost of the lights is similar to other lights in town; Mr. Poore said the lights on Route 1 are a lot more expensive than these; these are \$4000 to \$5000 a piece.

Councilor King asked if they can use TIF funds for this. Mr. Poore said they could if they had an affordable housing TIF on this property, but there is no project here yet. They can reach back a certain amount, but he said they could also move some items that are currently in the capital plan into the TIF if they establish one.

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

Councilor Kitchel moved the order; Councilor McBrady seconded.

Councilor Hemphill said this is a good opportunity to do this now; it will add safety and value to the Activity Center.

Chair Farber asked if they might need pathway bollards to the walkway off the senior center. Mr. Poore said they haven't reviewed the lighting out there. Oceanview is considering outdoor lighting around the common area between the two buildings. There are wall packs out there now, and there might be a more cost-effective method of adding wall packs instead of underground bollards.

Motion carried 7-0.

Item 13 Update from staff on 2016 Very Merry Weekend Event (formally know as Shop Falmouth) and order to authorize a supplemental appropriation up to \$20,000 for the cost of this event, such funding to be allocated from the Route One South TIF Development Plan account.

Mr. Poore said that this is the new name for Shop Falmouth, which was instituted 4 years ago. It started out small, but with lots of big ideas. The Town hired Paula Mahony to help with the event last year and create a bigger foundation for this year. This is more than promoting businesses; it is a community event. He reviewed the proposed list of events, including the annual tree lighting, an ugly sweater fun run, a screening of Christmas movies at the Flagship movie theater, a cook-off, horse and wagon rides, Segway Santa, a remote broadcast by WHOM, a scavenger hunt, and more. The total cost is about \$30,000; with business sponsorships they are estimating the Town's costs will be around \$19,000. The request for \$20,000 would leave them with a \$1000 contingency. The Chamber of Commerce has been a valuable partner in this event. In future years, the staff will build this into the TIF development plan so it would be reviewed during the budget discussions.

Councilor King asked about the support from the Town of Cumberland last year; Mr. Poore said the Chamber is technically for both towns. While Cumberland businesses are invited to participate, the Town of Cumberland has a hard time justifying the expense since this seems to be a Falmouth-centric event.

Councilor McBrady felt this was an excellent use of these TIF funds. Mr. Poore said this is also a learning opportunity before the tercentennial celebration.

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

Chair Farber liked this but worried about the progression, not just increasing costs but pulling staff time away from other duties.

Councilor McBrady asked how much they have reached out to businesses for support. Mr. Poore said there has been much more outreach. There has been a learning curve for staff; they are looking for \$5000 in business sponsorships this year, which is much larger than last year.

Chair Farber hoped that this would become the role of another organization in the long term and the Town could assist. Councilor Svedlow wondered about a volunteer committee instead of it being staff-driven.

Councilor Hemphill moved the order; Councilor Svedlow seconded. Motion carried 7-0.

Item 14 Ordinance to adopt a zoning amendment to enact contract zoning.

Councilor King said the CDC met to discuss the feedback they received at both the Council and Planning Board meetings, but decided not to change the language. They discussed but did not add abutter notifications for the concept review, since at that stage the discussion was conceptual, and because adequate opportunities for public comment would be provided at later stages.

Councilor King moved the ordinance; Councilor Ferrante seconded.

Chair Farber appreciated that they extended this to the additional zones, as requested by the Council.

Motion carried 7-0.

Item 15 Ordinance to adopt the maximum levels of income and expenses for the General Assistance program, Chapter 6, Article 6, Section 6.68, Appendices A-D of the Falmouth Town Ordinance.

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

Item 16 Order to amend the Land Use Fee Schedule to add fees for contract zoning.

Councilor King said that part of the contract zoning ordinance establishes certain fees, which need to be listed in the fee schedule. The proposed fees are modeled on similar, existing fees.

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

Councilor Kitchel moved the order; Councilor Svedlow seconded. Motion carried 7-0.

Item 17 Introduction of amendments to the Zoning and Site Plan Review Ordinance to clarify the Net Residential Area required for certain types of residential development.

Amanda Stearns, Community Development Director, said the Council adopted an omnibus zoning amendment in July. When the policy was translated into ordinance language, one element regarding net residential area was inadvertently left out. This amendment preserves the policy discussed and approved by the Council on July 11, 2016.

Councilor Ferrante said this essentially doesn't change anything; Ms. Stearns said it changes nothing regarding the policy discussed by the Council, just the implementation language.

A public hearing was scheduled for October 24.

Item 18 Order to exchange a small portion of land between the Town of Falmouth (Falmouth Nature Preserve) and Don Oaks of 176 Foreside Road, conditioned upon necessary approvals from the Nature Conservancy.

Mr. Poore said this is located on Foreside Road, next to the entrance to the Nature Preserve. There are a lot of large trees between the road and the private property. There is a stockade fence along the property line. Before the zoning amendment in July changed the setbacks, there was a 20 foot setback required from the property line to the pool house; now that setback is only 10 feet so it is no longer an issue, but the fence encroaches onto Town property. Town staff researched the property to see if there was any way to grant an easement, but the only solution is this proposed land swap. Staff discussed this with the Nature Conservancy and they have tentatively agreed to it. Since that time, it was discovered that there is a pump system which, due to its size, is required to meet the same setback as the pool house. If they attach the pump to the pool house with a roof, it only needs a 3 foot setback. This would change the proposed land swap, adding 3 additional feet to each side.

Councilor Svedlow asked if there was any cost to the Town; Mr. Poore said no, the property owner agreed to pay for some legal time for the Town.

Councilor King asked if a new deed needs to be created to show this new property line. Mr. Poore said it would be a deed just for this transaction, with metes and bounds. The property owner is investing in all that survey work.

Councilor Hemphill asked if the fence would remain the same; Mr. Poore said that is correct. The property owner thought they were installing fence on the property line. They are now moving the property line to where they thought it was.

Chair Farber asked when this was built. Mr. Poore said it was built in 2006.

Ms. Stearns said the pool house would have required a permit; the pad should have required a permit. The fence did not. She thought the pad was placed there without a permit inadvertently.

Chair Farber asked if the Waterview Overlay District was in effect at the time; Ms. Stearns was not sure.

Mr. Poore said he would discuss the permit situation, and address it if it is an issue. He thought the previous code officer was on site with the pad was installed.

Councilor Hemphill asked about the response from the Nature Conservancy.

Don Oaks, property owner, said the Nature Conservancy was the original grantor of the parcel that the Town now owns. The deed restricts any sale or transfer of land from the property. He is actually a member of the board of the Nature Conservancy and has been for 7 years. Their main concern is the conservation value; the land subject to this transfer has little conservation value. The goal of the Conservancy is to maintain the amount of land in the preserve.

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

Councilor Svedlow moved the order; Councilor Ferrante seconded.

Councilor Svedlow amended the order to include the updated sketch plan; Councilor Kitchel seconded.

Amendment passed 7-0.

Councilor Hemphill felt this land swap would be a benefit to all parties.

Amended order carried 7-0.

Item 19 Update from the Town Manager regarding options for installing new streetlights on utility poles.

Mr. Poore gave a presentation on the history of municipalities attempting to gain ownership on streetlights in their towns; most of the town's streetlight cost is in leasing fees on the fixtures since they are actually owned by the utility. In recent years, he has been working with representatives of South Portland and Rockland as a Municipal Streetlight Group to draft legislation to allow the towns to own the fixtures. The legislature passed a watered down version of the bill in 2013. The PUC has been reviewing it since then, and has now issued its ruling. He discussed the concessions the towns granted as part of the negotiations, including insurance requirements and technical installation requirements. He discussed the benefits of the town owning the lights including energy savings, fixture options, cost savings, control options, and flexibility with placement and removal. The Town issued a RFQ with Biddeford, South Portland and Rockland for design services and procurement of lights; the towns have selected RealTerm Energy, a company with experience in converting street lighting. They will begin with an inventory of the lighting, including all the municipal properties, and then do a photometric analysis. They will consider lumens and color temperature in the design. They will also coordinate with other projects that might be planned. They could be looking into adding lighting where there is none now to improve pedestrian use. He said the Town pays \$19,000 in energy and \$12,000 in delivery annually; \$65,000 is leasing fees for the fixtures. He discussed the estimated costs of the project; the initial cost of the streetlight installation could be around \$300,000; the annual costs, including a capital plan for ongoing maintenance would be around \$44,000; this would result in an annual savings of over \$50,000 and a payback of less than 6 years.

Councilor Kitchel asked for more detail about the streetlight leasing. Mr. Poore said that, prior to the law, they were only enabled to do streetlights without leasing them if they metered each one, as they did for the lights along Route 1.

Councilor Kitchel asked about the PUC process. Mr. Poore said the PUC was very fair; there were far more rulings in favor of the municipalities than there were against them.

Mr. Poore said the first phase of the contract, the audit, will only cost the Town approximately \$6000, which will be covered within the Town's budget. He will return to the Council with an appropriation request at a later date.

Adjourn

Councilor King moved to adjourn; Councilor Hemphill seconded. Motion carried 7-0.

Meeting adjourned at 10:12 pm.

Respectfully submitted,

Melissa Tryon

Recording secretary