

# **Town Council Special Meeting**

## **Minutes**

### **March 13, 2017**

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

#### **Roll Call**

Councilors McBrady, Ferrante, King, Hemphill and Farber were present and answering roll call.

Councilor Svedlow arrived late.

#### **Item 1                    Council workshop on land use policy related to recreational marijuana establishments.**

The Council met with Town Attorney Amy Tchao, Code Officer Justin Brown and Community Development Director Amanda Stearns to discuss options for regulations on recreational marijuana in the town, and how to proceed in considering those regulations.

Ms. Tchao said there are 5 points to consider: 1. The Council needs to decide whether they want to prohibit it entirely, which is allowable. If they decide to be a dry town, all the following points go away. 2. Whether they want to limit the number of each of the 5 license classes, i.e. a limit of only one social club in town, or two retail facilities, etc. 3. Where do they want to allow each of these things and how does the zoning ordinance allow them. 4. Local regulation and licensing: nuisance based regulations, security aspects, and time/place/manner restrictions. 5. Adopt a local licensing scheme and impose local fees.

Ms. Stearns discussed the prohibition question. The Council could prohibit with a sunset clause. It doesn't have to be permanent. Ms. Tchao said a moratorium allows staff to explain to applicants that the town is not accepting applications at the time.

Mr. Brown said there are no provisions that can be set in place to prevent people from doing home-grown and home use in the residential areas. Ms. Stearns clarified that none of this impacts what is allowed for medical marijuana growers. An application for medical marijuana would be permitted under current zoning. The town has determined that the current permitted businesses are allowed under a "light manufacturing" use and not under the "farming" definition. The climate in Maine is not conducive for a business to do outdoor cultivation. A large greenhouse would qualify as farming. A warehouse for an indoor growing facility would be limited to the districts that allow "light manufacturing".

Ms. Tchao said some towns have specifically stated that marijuana cultivation is farming/agricultural. A moratorium/prohibition with a sunset might be a good idea in order to allow the Council time to study it. The town has the right to state that there shall be no marijuana growing in the town at all.

Councilor Hemphill was interested in the business opportunities; this is a potentially lucrative market. What are the impacts of allowing the light manufacturing in the BP district?

Chair Farber thought one of the low-impact classes is the testing lab. A lab could do testing for anything, not just marijuana, and there would be no retail or use on site. Ms. Tchao said the law limits laboratory businesses from having interest in any other marijuana focused business.

Councilor Svedlow wondered about the financial impacts on allowing these businesses in town, either positive or negative. Mr. Poore thought they would have to hire a consultant to do an analysis.

Councilor McBrady thought they should put this off, and allow them to do more research before making a decision. Councilor Svedlow agreed.

Councilor Svedlow pointed out that this was passed by the people, and while it makes sense to take time to study it, ultimately he felt it was their job to implement it.

Ms. Tchao pointed out that, without a moratorium in place in town, there are implications for any applications that might come in now.

Councilor Hemphill voiced support for a moratorium over a prohibition and then they could evaluate this further. Councilor McBrady agreed.

The Council discussed with staff the process to implement a moratorium or a prohibition. It would be possible to pass either one before the end of May. A moratorium could be made retroactive to the date it was introduced.

Chair Farber asked the Council to consider what group should be tasked with taking the next steps on this issue: an established committee, an ad-hoc committee of the Council, a citizen committee. She would like them to be ready to decide on next steps when the moratorium goes into effect.

Councilor Kitchel arrived at the meeting.

Chair Farber moved to amend the agenda, taking items 6 and 7 out of order. Councilor King seconded. Motion carried 7-0.

**Item 6                      Public Hearing on an amendment to the Code of Ordinances, Coastal Waters Ordinance in order to decrease the number of dinghy permits.**

This amendment would reduce the number of resident permits from 60 to 40, and the non-residents from 30 to 20.

Chair Farber opened the public hearing.

John Winslow of Gray Road said this change has not been discussed by the Harbor Committee; they haven't met since October. He asked if the mooring holders had been notified of this proposed change. He didn't think this has been properly noticed.

Keith Noyes of Gray Road asked if they are going to bring in more town dinghies and if those would be maintained. They weren't last year. This change didn't make sense to him.

Richie Garrett, chair of the Harbor/Waterfront Committee, discussed the current regulations. He said the committee is recommending reducing the number of dinghy permits. There are typically 60-70 dinghies at the landing and they are tied together in a mish-mash. There is no safe way to board the dinghies. The committee feels that they must reduce that number to avoid a terrible accident. On a windy day, the dinghies are dangerous. The town dinghy program is very successful. He agreed that there have been issues with the oars being broken. There are over 300 moorings, and only 90 dinghies. Not all the mooring holders have dinghy permits; they either use the town dinghies or bring their own and board it on their boat. Everyone on the Harbor Committee agreed that they must reduce the number of dinghies tied to the float before someone drowns.

Chair Farber closed the public hearing.

Councilor Svedlow agreed that there is a problem with the dinghies at the landing. He was concerned that the public needs more notice. He recommended they delay action on this item pending more input from people that use the harbor. He knows they start issuing dinghy permits in April so there is a time issue.

Councilor King said they discussed this at the Harbor Committee last year. She pointed out that many dinghies are inflatable and are much larger than in the past and this increased the density and hazard situation.

Councilor Svedlow asked Mr. Garrett about the history of this item.

Mr. Garrett said this issue has been discussed for 20 years. About 5 years ago there were dinghies all over the beach, leading to an ordinance against personal property on the beach. A few years later they prohibited motors, and then modified that to allow non-gasoline motors. They have also discussed prohibiting personal dinghies altogether, minus a few commercial dinghies. They have discussed prohibiting the inflatables as well. They don't fit down there. Neither the Yacht Club nor Handy Boat allows them.

Councilor Kitchel spoke about his experience with dinghies at a different anchorage. He said inflatable dinghies take up a lot of space, and they can leak air. He pointed out that the Yacht Club and Handy Boat each have a launch service.

Councilor Svedlow asked for staff to send an email to mooring holders to notify them of this proposed change. He wanted to allow additional public comment before the Council votes on this item.

The Harbor Committee will meet on March 23, at 8:00 am at the police station and will have this item on their agenda.

The order was scheduled for March 27.

**Item 7                    Order to amend the Falmouth Harbor Fee Schedule.**

Chair Farber opened the public comment period.

John Winslow of Gray Road said they are using this fee increase as a way to reduce the number of permits issued, on top of reducing the number of permits allowed. The fees are supposed to support the facilities. This fee would penalize people who might want a dinghy for their child.

Keith Noyes of 94 Gray Road didn't see a reason to raise the fees. He said the fees were raised to support upkeep of the town dinghies. He doesn't see that those dinghies have been maintained properly.

Chair Farber closed the public comment period.

Councilor Kitchel said dinghy fees up and down the coast are \$250-400/year. These fees are a steal and he sees no reason not to raise them. He felt they need to revisit how they maintain the town dinghies. He felt they should have as many town dinghies as they can afford; if they can buy two more, they should.

Chair Farber moved to postpone this item to the next meeting, to allow for more public comment.

Councilor Svedlow seconded.

Mr. Poore said he would get some input from staff on the condition and upkeep of the town dinghies.

Motion carried 7-0.

**Item 2                    Public Hearing on amendments to the Subdivision Ordinance, the Street Acceptance Ordinance and the Zoning and Site Plan Review Ordinance to address invasive terrestrial plants.**

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

The order was scheduled for March 27.

**Item 3                    Public Hearing on an amendment to the Code of Ordinances to establish a licensing process for the permitting of farmers' markets.**

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

Councilor Hemphill asked why they removed farmers' markets from the West Falmouth Crossing and Tidewater districts.

Amanda Stearns, Community Development Director, said they need to remove the use from the zoning ordinance in order to make it clear that it is not a permanent land use permitted under zoning. It is a temporary use permitted under licensing.

Chair Farber asked if a winter market would cause a problem with the temporary use.

Ms. Stearns said if the market wanted to establish a use inside a permanent building, they could do that under land use zoning. Under the license, the Council will determine the time frame of the use. If the market were to become a year-round, indoor use, the market could be directed to establish a permanent retail use under zoning.

Chair Farber asked about an organization that operates a summer market in one location, and a winter location in another location. Ms. Stearns said they would likely treat that as two licenses, even though it was one organization.

Councilor McBrady pointed out that this is a year-long permit. It must be reviewed and renewed annually.

Chair Farber asked if a vendor that does not farm but sells products such as jam could sell at the market. Ms. Stearns said yes; under the state definition, at least two vendors must be farmers in order to be called a farmers' market. Ms. Stearns said the town's license adds another layer on that, requiring that the market primarily retails farm produce. They will be licensing the organization and not independent vendors. Most organizations have their own regulations on who can participate in their market.

The order was scheduled for April 12.

**Item 4                      Public Hearing on an amendment to the Subdivision Ordinance related to underground utilities in subdivisions.**

Chair Farber opened the public hearing.

John Winslow of Gray Road asked what utilities were included: water, gas, electric, sewer, etc.

Shawn Billington of Bentrige Drive asked which districts were impacted by this change.

Chair Farber closed the public hearing.

Chair Farber said this amendment covered the two new districts created by the zoning omnibus in July: RD and HL.

Ms. Stearns said this includes all public utilities: street lights, electric, phone, hydrants, water, sewer, etc. There is no geographical change in the HL zone; there is a small area of the RD zone that was in Farm and Forest previously, so this is a small expansion. However, all subdivisions in Farm and Forest are subject to conservation zoning, which has the same effect.

Chair Farber asked why RC is not included. Ms. Stearns said RC has its own unique standards; it is similar to RA and RB.

An order was scheduled for March 27.

**Item 5                      Public Hearing on an amendment to the Zoning and Site Plan Review Ordinance to clarify the minimum net residential area required per lot in the VMU District.**

Ms. Stearns explained that there are two areas where the Town controls residential density. This section is intended to ensure that there is sufficient area on a lot to support residential development. These numbers were changed to reflect the provision for multi-family units on one lot. In doing so, they inadvertently decreased the allowed density in the VMU district. This returns the ordinance to its position prior to July.

Chair Farber opened the public hearing.

John Winslow of Gray Road felt all VMU property owners and abutters should have been noticed. He felt this was a huge change. This is a challenging district and is very eco-sensitive. He said this doubles the allowed density and he asked if anyone has studied the effects on the traffic, water, sewer, schools of this increased density. He didn't think they were prepared to make a decision on this issue. He was concerned with the impact on traffic on the Gray Road. He said the previous limits of 10,000 with sewer and 20,000 without sewer worked for years.

Steve Dyer of Mountain Road said this is not a clarification, this is a reduction. This will increase the density. He objected to the process this has taken. He said they are trying to push VMU into a city district and it isn't; it is supposed to be a commercial district with a residential component in harmony. There are only 122 residents in this 400-acre area; it is not a dense area.

Shawn Billington of Bentrige Drive compared this to the Route 1 project. He said all the residential development along Route 1 is in the back. The infrastructure along Route 1 cannot be duplicated along Route 100. He spoke about the traffic difficulties along Route 100 and Mountain Road.

Jim Rodway of Mill Road felt this would be too much. He agreed with the other comments. He was concerned with the traffic impacts on Mill Road.

Chair Farber closed the public hearing.

Ms. Stearns clarified that the maximum residential density is not changing; each residential unit must have a minimum lot of 10,000 sf if it is on sewer and 20,000 sf if it is on septic. On top of that, in order to build on a lot the net residential area, once easements, etc. have been excluded, must be 5000 sf for a lot with sewer, and 10,000 if they are on septic. This amendment resets VMU back to what it was in June of 2016, before the omnibus amendment was approved.

Chair Farber said this amendment is not related to the discussion about the neighborhood sketch plan.

The order was scheduled for March 27.

## **Item 8                      Resolution on the West Falmouth Neighborhood Sketch Plan project process.**

Chair Farber opened the public comment period.

Steve Dyer of Mountain Road felt they had spent enough taxpayer money on this private property. This doesn't make sense and it should end here. He said one of these committees needs to discuss this proposal with the schools; it would be a huge impact on the schools.

Shawn Billington of Bentrige Drive was concerned with the impact on the schools, the fire department, public works, etc. He didn't think the study they have done has addressed these issues. He wondered if they were trying to scare people with a really high number in order to make a smaller number more acceptable; that is bad business.

John Winslow asked why the Town spent \$8500 to come up with this concept plan; the Town has done a great job of confusing people in this district. There are many more issues that need to be studied before they move forward with this type of proposal.

Jim Rodway asked about the notification process; he heard about this from a friend.

Jackie Billington of Bentrige Drive is opposed to this development. There is nothing favorable about this. She was concerned about the impact on the schools. She felt it would ruin the character of West Falmouth and ruin the schools.

Keith Noyes of Gray Road said West Falmouth has always been rural. He opposed the proposal.

Public comment period closed.

Councilor Kitchel pointed out that this is a concept plan; no one has discussed any specific number of residential units and any approved units would be built out over a period of time. He urged people not to focus on any large number of homes; no one has discussed it at any time. He said this is evolving, and they might end up with a really nice community out there.

Councilor King said this isn't a plan for a development; this is in response to a group of landowners who had expressed interest in developing. She too is concerned about traffic, load on the schools, and infrastructure. She said they tried to create a hypothetical development with roads that work; this was an opportunity to think ahead. They understand the concern for density and impact.

Councilor Hemphill said this was the Town's response to some development interest in the area, and the concept was to show how smart growth could be achieved in the area. It has stimulated thought and discussion about the area. Landowners can do what they want.

Councilor Svedlow moved the resolution and read it into the record. Councilor King seconded.

Councilor Svedlow said the owners of these properties have the right to develop their lots as they see fit. He commended them for participating in this process to see how their properties could be developed in conjunction with others.

Motion carried 6-0. (Ferrante abstained)

**Item 9                      Order to authorize the Town Manager to execute an amendment to the Falmouth Memorial Library's Term Promissory Note.**

Chair Farber explained that in 2014, the Town authorized a loan to the library for \$283,000 to purchase an abutting property. A provision of the promissory note stated that, if \$250,000 was paid to the Town by June 30, 2017, the remainder of the loan would be forgiven. A few months ago, the Library requested an extension on their fundraising deadline to December 31, 2017. They are now asking that this prepayment deadline be extended to match their fundraising deadline.

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

Councilor McBrady supported the request, but would like an update on their overall fundraising soon.

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

**Item 10                      Discussion about an application to accept Cleaves Farm Road and Maple Street as public streets.**

Jay Reynolds, Director of Public Works, said they have received an application from the Homeowners Association (HOA) for acceptance of these two streets. They are both approximately 2,200 feet in length. The street acceptance process includes an initial discussion with the Council on whether an application should continue with what can be an expensive process.

Councilor King asked how the Council has addressed street acceptance with regards to connectivity.

Mr. Reynolds said in 2004/2005 the Council amended the street acceptance ordinance, and adopted the connectivity policy in 2010. It is a policy and not in the ordinance. This allows the Council the flexibility to review any street and accept them as they see fit. Since this time, they have accepted streets with some connectivity and some with no connectivity. The Planning Board has required some projects to provide methods of connectivity including paper streets, rights of way, and trails to open space.

Chair Farber asked about the paper street on this property; Mr. Reynolds said it extends at the end of Cleaves Farm Road and leads to the abutting Reiche property.

Councilor King thought one of the compelling reasons to accept a street was the public's interest. She asked what that meant in this instance.

Mr. Reynolds said the street acceptance ordinance speaks to how the subdivision was built, how it relates to street construction and current standards, how it was approved by the Planning Board and any waivers granted, and the ability to provide public services and street connectivity.

Chair Farber asked if it would be prohibitive for the HOA to widen these streets to bring them up to current street standards. They were granted width waivers when they were approved. Mr. Reynolds said there is curbing and closed drainage on both sides of the street. It would be fairly prohibitive.

Councilor Hemphill asked if sidewalks would be required; Mr. Reynolds said sidewalks were waived by the Planning Board. They are typically required of street acceptance applications. They are part of the road standards.

Councilor Svedlow thought Cleaves Farm would be challenging for a plow truck; Mr. Reynolds said there is a hammerhead so it is possible to make a three-point turn.

Chair Farber asked the HOA to present their request.

Art Batson of Maple Street said they were not able to move forward with their request until now; they only met the residential requirement in 2013. This property abuts the 14-acre parcel owned by the Reiches, which has been on the market multiple times. He argued that making these roads public would assist the development of that property by providing connectivity to any development on that parcel. He said this would provide better access to the public for the trail. A lot of the neighbors on Pleasant Hill walk their dogs down these roads. With regards to the street width and sidewalks, he said none of the residents had any say in the waivers that were granted by the Town. He thought the developer should have been held to the street standards. He felt street width is negotiable and shouldn't have much of an impact. There is the opportunity for sidewalks. He said the ordinance doesn't require sidewalks for a "minor road" with 9 homes or less: Cleaves has 6 homes, and Maple has 9.

Chair Farber asked them why they wanted the street to be accepted. Mr. Batson said part of it was the cost to plow and maintain it. He liked the idea of it being public, so that the public feels free to use it.

Chair Farber pointed out that the Town has no control over the school busses and their routes.

Councilor Hemphill asked about the current connectivity. Mr. Batson said Maple has no connectivity and Cleaves is a dead end. When it was built, there was no connectivity policy, but there is an easement to the Reiche property. The policy speaks to future connections not to a current road. One of the elements of connectivity is trails, bikes and pedestrian connections. There is a public trail and easement to the cemetery. The public already uses these roads to walk and bike on, since Pleasant Hill is a dangerous road.

Councilor King asked if there was a planned trail in the subdivision plan. Mr. Batson said that was an existing easement that leads to the Bachelor Cemetery. That exists and is maintained. They see people using it. He felt that addressed connectivity as well; public access to natural landscapes. There are three streetlights that were part of the plan

Councilor King found it frustrating to be asked to accept streets that have had waivers granted and are not built to the standards with regards to width, connectivity, sidewalks and streetlights.

Chair Farber didn't see anything in this application that made this a special circumstance. She wasn't interested in proceeding.

Councilor Hemphill thought there was an opportunity for future connectivity, but it isn't here and the current circumstances didn't support the Town maintaining these streets. Councilor McBrady agreed.

Councilor Svedlow wanted more information. He said there are other streets off Pleasant Hill that are similar in character and are public streets. Councilor Ferrante agreed; she thought it was an issue that people live on

these roads and pay full taxes and don't get road services, especially when there are town roads that don't meet current standards.

Councilor King said when people purchase in a development, they know that the street is private and may not be accepted. She felt it was important that they send a message to developers that the Town wants connectivity, sidewalks, and well-built streets if they expect the Town to accept them. In this case, the developer did what was good for him, and the Planning Board gave out these waivers.

The Council asked for this to be put on an agenda in April with more information on the cost of maintenance and upkeep.

**Item 11                    Order to authorize the Town Manager to execute agreements with the Maine Department of Transportation (DOT) to release property rights in two parcels in order to facilitate the construction of a roundabout at the intersection of Woods, Longwoods, and Middle Roads.**

Mr. Poore explained that the DOT goes through a review process on the value of these parcels. They are offering \$14,000. At Mr. Poore's request, the Town Assessor reviewed the properties and estimated their value at \$18,000. He didn't feel that this was a significant difference and recommended they adopt this order.

Mr. Poore said the DOT has recommended a north-bound slip lane onto Middle Road, but town staff have argued that it isn't necessary. DOT has designed and will build the roundabout so that the lane could be added later, but at that time it would be the Town's responsibility.

Chair Farber said at the last bike/pedestrian meeting there was a lot of discussion about the slip lane; they were not in favor of it.

Councilor King asked what will happen to bikes and pedestrians in the roundabout. Mr. Reynolds said there is a shoulder that goes around the circle. DOT is planning additional signage to bring awareness to the bicycles, and the approaches have a wider, paved shoulder.

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

Councilor Kitchel asked if this is the best possible solution for this intersection. Mr. Poore said yes, without a doubt. Mr. Reynolds said this is a high-crash intersection; statistically, roundabouts reduce crashes.

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

**Item 12                    Order to schedule a public hearing on the FY18 Municipal and School Department Budgets for April 5, 2017.**

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

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

**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 Hemphill seconded. Motion carried 7-0.

The Council entered executive session at 9:43 pm and did not return.

Respectfully submitted,

Melissa Tryon  
Recording Secretary