

# **Town Council Special Meeting**

## **Minutes**

### **April 12, 2017**

The meeting was called to order at 6:02 pm.

#### **Roll Call**

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

Councilor King was absent. Councilor Svedlow arrived late.

#### **Workshop**

#### **Workshop on the materials for the permanent sign amendments to be introduced by the Community Development Committee.**

Community Development Director Amanda Stearns and Town Attorney Amy Tchao discussed the Supreme Court ruling in Reed v. Town of Gilbert that affects signage regulations and the categorization of signs. Changes to Falmouth's sign ordinance are needed to comply with the Reed decision. Another case allows that commercial speech (advertising signs, store signs, etc.) can be regulated more stringently than individual or political speech.

Ms. Stearns discussed the work CDC did to make sure these amendments are Reed-compliant while maintaining current regulations as much as possible. They did an overview of how signs were regulated in the ordinance. These amendments move from a content-based regulation to a form-based regulation (size, number, location, etc.). The current sign ordinance is fairly strict, and the layer of design guidelines has given the town a certain look along Route 1 and Route 100. The Committee didn't want to make the ordinance retroactive; current signs will be allowed to remain and be maintained in their current configuration. They combined all sign regulations into one provision. Certain signs are exempt, including traffic control signs and any signs placed for a governmental function.

Councilor McBrady asked how this is enforced. Ms. Stearns said if a sign obstructs traffic or creates a public safety problem the police have the right to remove it. Signs on private property are required to have permits and are administered and enforced by the Community Development Department.

Ms. Stearns said they are trying to create uniformity within a district to make it fair for everyone. Everyone has equal opportunity to have a sign. The Town cannot regulate what is said on a sign except that a person could not rent space on a sign that is not located on their property. Off premise signs are not currently allowed, and will not be allowed in the future. The Committee discussed changeable type signs, including electronic type signs, but decided that this issue will require another level of evaluation and study so they are not included in these proposed amendments. Internal illumination is only currently allowed in certain districts and restricted from overnight use; the Committee is recommending removing that restriction. Those signs are strictly regulated under the design guidelines already.

Chair Farber asked where the difficulties were with this ordinance; Ms. Stearns said size of signs, especially in residential districts, size of characters, and moving from the current limitations on amount of sign content to regulating the size of the sign and the characters.

Councilor Ferrante asked if the allowed size of commercial signs is being reduced, especially along Route 1; Ms. Stearns said sign sizes are being maintained in the commercial districts; they are not being altered. They added a maximum character height.

**Item 1                      Recognition of Falmouth recipients of Ecomaine eco-excellence awards OceanView at Falmouth and Cathy Nichols.**

Councilor Svedlow arrived at the meeting.

Councilor Hemphill recognized Cathy Nichols for receiving an eco-excellence award in the individual category for her work with REAC on the bag ordinance. She has put in countless hours researching ordinances around the country and the world, has developed an immense amount of knowledge on manufacturing of paper versus plastic, and is deeply passionate about recycling thin-film and making sure folks know exactly what can be recycled and the appropriate place in which to do so.

Councilor Hemphill recognized OceanView at Falmouth, the top winner in the Business Leadership Category. OceanView's many accomplishments include: realization of a net zero school; diversion of 30,000 pounds of food scraps; dozens of kilowatt hours of grid-tied solar electric; a 360-tube solar hot water collector; 18,000 gallons of displaced propane; elimination of more than 223,000 lbs. of CO2 emissions; and over \$1 million invested in renewable energy. Rooftop solar arrays are being installed on new residences, which each save 4,000 to 5,000 lbs of CO2 per year. The community also offers a robust composting and recycling program. Components of the program include recycled fryer oil collected by Maine Standard and used for biodiesel and soaps; locally sourcing produce and seafood; sourcing all disposable products from recycled or compostable material; and composting food waste. The community's Blueberry Commons, Legacy Memory Care, Lunt School, and Schoolhouse Cottages projects recycled 95% of all waste and surplus building materials. Solid core wood doors, vinyl windows, cabinetry, appliances, and laminate countertops from older buildings are continuously donated to Habitat for Humanity.

Chris Wasileski of Oceanview complemented Ms. Nichols on her work on the bag ordinance. He thanked Oceanview staff Jean Coughlin, Joe Baker, and Maureen Baker and their construction contractors Hildreth & White Construction, Landry French Construction, Cousins Construction, Litchfield, TrueNorth Builders, and Storey Brothers Excavating for their efforts; they are instrumental in making Oceanview's policies real.

Ms. Nichols said REAC is looking forward to more public education and outreach. She thanked town staff for all their support.

**Item 2                      Introduction of amendments to the Code of Ordinances regarding permanent signs.**

Ms. Stearns explained that the Supreme Court handed down a landmark decision (Reed v. Gilbert) in the summer of 2015 that changed how towns can regulate signs. Signs can no longer be regulated by content; they now must be regulated as content neutral, except for signs that serve a governmental function. The CDC was tasked to review the Town's ordinances and propose amendments to bring them into compliance with this ruling.

Councilor Hemphill pointed out that these amendments will regulate new signs; existing signs will not have to be changed.

Chair Farber said the current ordinances have different regulations for different uses (retail store, gas station, church, etc.). That type of regulation is no longer allowed under Reed.

The Council discussed how to notice commercial entities about the proposed change; Mr. Poore said they could email businesses and the Chamber.

Councilor Kitchel said this will be a simpler ordinance. The Committee considered the aesthetics of signs in town. It will be easier for businesses and sign companies to understand.

Councilor Ferrante hoped they would address electronic signs in the future. Chair Farber said they would discuss those and temporary signs at the workplan meeting in the summer.

A public hearing was scheduled for May 8.

**Item 3                      Order to authorize the Town Manager to execute an option agreement previously approved by the Town Council and to confirm a previously executed amendment to the option agreement.**

Mr. Poore said this pertains to open space acquisition of the McDermott property. If the Town acquires Huston Way, they would have more obligations that they wanted so this amendment moves the boundary of the acquisition to avoid the road. The Town has been in negotiations with the property owners on a road maintenance agreement for the access road. Some changes were made to the proposed road maintenance agreement today; staff and the town attorney have reviewed these changes. If the Council approves this, they the closing on the property will likely be held by the end of April. Staff have confirmed with the grant authority that the grant will not be impacted by this reduction in the acreage.

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

Councilor Kitchel moved; Councilor Ferrante seconded. Motion carried 5-1 (McBrady).

**Item 4                      Ordinance to amend the Code of Ordinances to establish a licensing process for the permitting of farmers' markets and to amend the Land Use Fee Schedule.**

Councilor Ferrante asked why the use would be removed as a permitted use from the two districts where it was included. Ms. Stearns said that, in order to permit farmer's markets as a temporary license agreement, it needs to be removed from the land use ordinance. Allowing it as a permitted use in any district would prevail over the license permit.

Chair Farber clarified that this is a different use than a farm stand, which is allowed in certain districts.

Councilor Svedlow moved the ordinance; Councilor Hemphill seconded. Motion carried 6-0.

**Item 5                      Order to appropriate \$175,000 to pay for a sewer collection relocation and expansion project that will be part of the Maine Department of Transportation intersection project at Woods Road, Middle Road and Longwoods Road.**

Mr. Poore said DOT requires utilities to move or relocate their infrastructure at their cost, since they are located in the DOT's right of way. The Town has reviewed the cost and feels it is reasonable; there is a healthy contingency included in this amount. This work would be put out to bid along with the DOT project.

Chair Farber clarified that this is coming from the enterprise fund, and would be paid by sewer use fees. Mr. Poore said yes; this was an expected expense as part of this project.

Councilor McBrady asked if the project amount would change based on bids; Mr. Poore said they would come back to the Council only if it comes back higher.

Councilor Kitchel asked how they manage the system while they are moving pipes; Mr. Poore said that would be planned out during the engineering phase. They will have bypass pipes. The Town has done this in other areas before.

Pete Clark, Superintendent of Wastewater, said they plan to pump around the area. They will have temporary pipe aboveground.

Chair Farber asked about the 'bare minimum' required for this project, and how much over that they are doing.

Mr. Clark said the long-term recommended design increases the diameter of the pipe. There are many underground utilities in this area. The sewer is fairly shallow and its depth is restricted by the spur. The designers of the DOT project fit everything in so there is room for all the utilities. The pipe will extend beyond the roundabout. If they don't do this work now, they will have to wait another five years to open the

road. Also, if they wait, the intersection will be more congested. The bulk of the work, moving pipes and manholes, is required by the project. There is maybe \$30,000 worth of work that could be put off; if the bids come out high, they would reevaluate that work before coming back to the Council.

Councilor McBrady asked if this was in the budget; Mr. Poore said it was in the long-term conceptual capital improvement plan and was included in the 3% rate increase proposal. It didn't have a date attached to it because it was a part of the West Falmouth work.

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

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

## **Item 6                      Order to authorize the extension of public sewer to serve the development of three parcels off Route 88.**

Chair Farber explained that, under current ordinance, if a development project will have a shared sewer connection, it must be public and accepted by the Town.

Peter Biegel of Land Design Solutions, representing the applicant, explained that the properties would have a shared driveway off Foreside Road. A utility easement would run the length of the shared drive, with the sewer line located within the easement. If a property has frontage along Foreside, they are supposed to connect. It doesn't make sense for the two back lots to run their own sewer line to Foreside. This shared sewer main would be designed and built by the developer and then the easement and the main would be turned over to the Town for ownership and maintenance.

Mr. Poore said staff are starting to review the Wastewater ordinance; this is an area that they are going to review as part of their work.

Councilor Kitchel asked if this road would remain private; Mr. Biegel said it would. It is a shared driveway.

Councilor Kitchel asked if each property would have a hook-up fee. Mr. Clark said there would not be any connection fees with the project; the ordinance exempts those for a developer-built sewer main. This is a gravity based system. The developer would probably like to build something a little less than this, since there are only three houses, but the town standards do not allow anything under an 8 inch pipe.

Chair Farber pointed out that these are good-sized lots, and there could be accessory dwellings added, so the 8-inch pipe might be prudent.

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

Councilor Ferrante asked how often this happens; Mr. Poore said not very often at all. Also, when the Planning Board requires a sewer line as part of a project, it can remain a private line. This project didn't have to go to the Planning Board.

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

## **Item 7                      Introduction of an ordinance to establish a moratorium on retail marijuana establishments and retail marijuana social clubs.**

Chair Farber said the Council held a workshop on this issue and felt they needed more time to evaluate the impacts of the new marijuana law. They asked staff to draft a moratorium for 180 days while the Council studies the law and its implications. This moratorium does not impact medical marijuana.

Councilor Ferrante asked when the Council would discuss next steps. Chair Farber said they could discuss it at the order, or at their workplan meeting.

Ms. Stearns pointed out that the moratorium is scheduled to take effect as of tonight's introduction, and not the day the order is approved. This is designed to protect the Town from the potential of applications being submitted between now and the order. Staff are prepared to start a dialogue with Council as soon as possible.

Chair Farber said they should discuss whether they have an ad-hoc committee to discuss this, or send it to ordinance committee, but that discussion should wait until the order.

A public hearing was scheduled for May 8.

**Item 8                      Introduction of proposed amendments to the Code of Ordinances,  
Chapter II-13 *Solid Waste*.**

Councilor Hemphill said ecomaine has asked all member communities to address the obligation to divert all residential waste and recycling to the ecomaine facility.

Mr. Poore said there may be a few adjustments made to the proposed ordinance language before the public hearing, but it won't be substantive. They are trying to modernize the ordinance but not change the policy. The permitting of waste haulers is not scheduled to take effect until January 1, 2018.

A public hearing was scheduled for May 8.

**Item 9                      Introduction of a proposed ordinance, Article II-8-13 *Commercial Waste  
Hauling*, to limit the hours during which commercial waste containers  
may be serviced.**

Chair Farber said this came out of concerns with the noise of dumpster servicing early in the morning. The committee is proposing to limit the dumpster servicing to 6am-10pm. Property owners will be responsible for ensuring the ordinance is followed.

At Councilor Ferrante's question, Councilor Kitchel confirmed that dumpsters are being serviced at all hours. This is similar to restrictions in other towns.

A public hearing was scheduled for May 8.

**Item 10                    Order to go into Executive Session pursuant to the Laws of Maine to  
discuss the Town Manager's annual performance review, pursuant to 1  
M.R.S.A. § 405 (6) (A).**

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

The Council entered executive session at 8:15 pm and did not return.

Respectfully submitted,

Melissa Tryon  
Recording Secretary