

# **Town Council Meeting Minutes October 2, 2017**

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

## **Roll Call**

Councilors Ferrante, King, Farber, Kitchel, Chair Hemphill and Jones were present and answering roll call.

Councilor Svedlow was absent.

## **Item 1      Discussion about the impact of a 2016 zoning amendment that increased residential density in certain zoning districts and methods to address concerns previously identified by the Town Council.**

Amanda Stearns, Land Use Policy Specialist, gave a brief history of the ordinance language since it was passed in July 2016, the unintended impact it has had, and explained that the Council determined at their last meeting that staff should proceed on drafting a moratorium with retroactivity to address these impacts. The purpose of using a moratorium instead of a reversion of the ordinance was to take a very exact approach to the problem and focus on where the issues are. She said that permits for infill development, 2-family dwellings on one lot, were not occurring at the same rate as those developments requiring subdivision approval, so those developments will continue to be allowed under this moratorium.

Councilor Farber asked what kind of development would be impacted by the moratorium. Ms. Stearns said this would only impact projects that require Planning Board approval. She discussed what qualified as a subdivision and listed several of the exemptions in state law. The types of developments that only need a building permit would include the conversion of a single-family home to a two-family home, development of a single, vacant lot or a lot split. A multi-family is defined as three families or more; without exemptions, these types of development would require Planning Board approval and so would likely be covered by the moratorium.

Councilor Farber clarified that this does not impact single family units, or accessory dwelling units, at all. She asked how this might impact any contract zone application that is in process.

Amy Tchao, Town Attorney, said this would not impact any contract zone applications before the Council; the contract zone is a legislative process and is outside the zoning that is in place. She said the proposed language addresses the Council's request to take a narrower approach as opposed to a full reversion of the ordinance passed in 2016. In the growth districts, they changed their density requirement so that a single-family needs 10,000 sf instead of 20,000, and a two-family property needs 5,000 sf per unit. In RA, you could have either a single-family or a two-family dwelling on the same lot. For subdivision proposals, an applicant must calculate the maximum number of units allowed. The formula for this takes the max net residential area, and divides it by the allowed sq. footage of the type of unit proposed. For a single-family home, that would be 10,000 sf, but it would be 5,000 sf for a multi-family home. This inadvertently made it easier to propose a development that contains twice the number of two-family units as the single-family units that would be allowed.

Councilor King said if the Council develops different density it will affect all lots, not just subdivision lots. Atty. Tchao said the moratorium puts a hold on things until they discuss how they want to address this. They could address the density on all lots, or they could decide to discuss just subdivisions. The moratorium was designed to address subdivision lots only while the Council discusses further action.

Councilor King said the reason it is limited to just subdivision is because that is where the issue has been so far. Atty. Tchao said staff studied how many infill developments had been proposed; there were only one or two. Based on that research, it seemed that the subdivision development was the most acute issue.

## **Item 2           Public Forum**

Chair Hemphill opened the public forum.

Fred Chase of Stagecoach Road clarified that this proposed moratorium will not impact the contract zone that is being proposed for Mountain Road/Route 100. When the RD and RB districts were created in 2016, they should have been applied to where public water and sewer is available, or where it will be installed someday. The reason for having 40,000-80,000 sf lots is to provide room for wells and septic. The only way to be fair to everyone is to have a moratorium that is retroactive; if it is not retroactive it isn't fair to anyone. Letting a couple developments through and blocking others isn't fair. If the ordinance is wrong, they need to get it right before some developers spend significant money.

John Winslow of Gray Road thought they weren't going back far enough; he wanted the Council to review the entire ordinance amendment that was passed in 2016. He didn't feel the Planning Department had adequate information on the environmental, traffic, and public service impacts of these residential high-growth area amendments. They are not mandated by the state to have these amendments, just to have a comp plan. He felt the Council is changing all the rules for the people who built in the area and want to call this place home. He felt it has been a mistake from the start.

Leslie Riversmith of Middle Road abuts one of the proposed subdivisions. She owns the first deeded house in Falmouth and lives next to a home that was built in 1809. While Falmouth doesn't have a historical district, if they did she felt it would be around her home. She felt this was indicative of the feel that Falmouth wants to have. It is a residential area, and they bought into its historical, pretty value. She didn't buy into having three duplexes on the lot next door. The sf of the houses has gone up; the new buildings will be 8000 sf. They have had water problems on their property since Emerald Pond was built. It has flooded twice in the last 7 years. She was concerned that the water from this development will come onto her property. She was concerned that this development will negatively impact her property values.

Don L'Heureux of Brook Road wondered if single-family dwellings would be impacted. There is a development of condos at the corner of Blackstrap and Middle. He was concerned about the impact of property values and quality of life. He is a realtor that sells a lot of property in Falmouth. He felt that West Falmouth is now the Wild West Falmouth. There was a home built on the corner of Blackstrap and Brook where they diverted a brook to build. He thought it was out of control, and he appreciated the Council taking control of it. He supported the moratorium and he hopes they control condo growth to protect waterways and minimize traffic impacts. He would like to see a compromise. He would like to see 16 units at Tuscan Way instead of 32. It is unreasonable to drop 32 units on that lot. He spoke about the mound septic systems at Falmouth Country Club and the cost of system failures. He would like to see the Council give the Zoning Board the authority to require developers to bring public sewer to these developments.

Tim Flaherty of Woodlands Drive opposed the moratorium. He felt it was directed against Tuscan Way. He said Jim Cummings is the most honest and qualified contractor, and will do an incredible job. He has installed many difficult septic systems. He represented the Pride family in the sale to Cummings. He felt this would be the best project the town has seen in a while. He said this was an age-restricted, 50+ project, and is developed to appeal to this market. It is a quiet neighborhood. He said they just built 72 of these at Prides Corner; it is quiet and has minimal traffic. He wondered what the allowed density would be if they brought sewer to the site; he thought it might be 80 units. The soil scientists would say that septic is better than sewer. He said there would be no impact on the schools in this development; that is what happened in his previous projects like this one. This type of unit is very much in demand, and he felt the moratorium was an overreaction.

Michael Traister, attorney representing Jim Cummings, spoke on Mr. Cummings' behalf. He said this project is a pending proceeding before the Planning Board, and has received preliminary approval. Mr. Cummings is scheduled to go back before them for final approval in a couple weeks. Under the ordinary rules, his project would not be impacted by any ordinance changes. Their issue is the proposed retroactivity. Mr. Cummings has about \$500,000 invested in this project and he submitted it in conformance with the Town's ordinances at the time. He has acted in good faith. It isn't fair to pull the rug out from under him. It seemed that the two projects that would be impacted are being singled out. He said this sets a bad precedent; changing the rules after the fact is not fair and would impact the business community. They think this is a good project and complies with the zoning. If the Council feels that changes need to be made they can do that moving forward. The neighbors have other methods to oppose the project.

Adrienne Fine of Terradyn Consultants, the project engineer on Tuscan Way, spoke about the development and how it was designed in accordance with the ordinances. It was presented to the Planning Board in December 2016, and has been through a rigorous process since then. The through-street connection from Brookfield to Blackstrap was designed in accordance with the Town's policies. Their septic design was designed with four backups, which is above and beyond the state plumbing code but in accordance with Town requirements. Multiple traffic studies have been completed on the proposed street. The applicant has jumped through hoops to prove to the Planning Board that the design was adequate. The applicant has also agreed to build sidewalks and provide public easements along the trails and roads so the public can use these. The applicant has spent significant time and money, and has received the permits and approvals from all outside agencies. The Planning Board granted preliminary approval in September. If the moratorium is applied retroactively, the applicant will face significant financial burden. They are on track for final approval.

Steve Hundley of Brookfield Road appreciated the Council addressing this matter with urgency. He supported the moratorium being applied retroactively. He didn't agree that the moratorium would be unfair to the developers; he felt the Town has told the developers that the density was excessive and that it would negatively impact the neighbors. They were asked to scale-back their developments, and they have refused to do so. The developers were well aware of the risks involved in pushing the ordinance to its limits and he didn't feel bad for them. Making the moratorium retroactive sends a message to developers that they can't bully the Town into accepting a development they don't want and will negatively impact the neighbors. This is a cost of doing business. There is a health and safety issue here; both with the traffic and the cluster septic system. He was a professional soil scientist for 40 years and served as state soil scientist in Vermont, Massachusetts, and New Hampshire. In his whole career, he never saw a system designed that was so egregious as the one proposed for Tuscan Way. He encouraged the Council to do a site walk on the property. This is a contaminated site waiting to happen. He said these types of developments are a big deal to the neighbors; the residents work to keep their homes and properties nice and it contributes to Falmouth's character as a nice community. He hoped the Council would take the side of the residents and not an out-of-town developer. The residents will have to live with the consequences.

Whitney Bradford of Brookfield Road said that she never heard that Tuscan Way was intended to be age-restricted; it didn't make sense for those to be three-bedroom units if that is the case. She asked the Council to make any changes retroactive; while she understood the financial implications on the two developers, she wondered about the financial implications on the residents. She built a home on a dead-end street for the quiet and lack of traffic. The neighbors don't oppose a development on the abutting property; they oppose 32 units on less than 3 acres. It doesn't fit the character of the neighborhood. She asked the Council to make the changes that will correct what was done, and to make them retroactive.

Jan Baker of Brook Road was concerned about the direction Falmouth was taking with regards to the zoning. The quality of life is what brings people to Falmouth, and dense zoning will change that. She acknowledged that it will be difficult for the developers in question, but she agreed that it should be retroactive to make it a level playing field. People don't oppose development, just the density proposed. She argued that the developer will not lose all the money he has invested, but it will make the development less dense.

Barb MacNell of Lakeside Drive said what is fair is not necessarily right. They are stewards of the land and she was concerned about what will happen in 10-15 years if they don't pay attention to the land and water, and how development of any kind affects us.

Dan Green of Kimberly Lane said this is the result of an unintended consequence of an ordinance that was trying to help people. The density of the proposed projects changes the character of the town. He didn't want what is going in there, and it is not why he purchased his home. He thought the moratorium would allow them to analyze what is going on. This is the first he has heard of any age-restriction on the development. If this type of housing was intended for first responders, as was mentioned previously, they need to look at how they pay first responders instead of allowing this density.

Allen Fitzgerald of Sunrise Drive said Hamlin Road is an old neighborhood and in the last few years it has transitioned into young families. He doesn't take his kids on Brook Road anymore due to the traffic. The entrance of Tuscan Way will be directly across from Hamlin; there is no way people are going to turn left onto Blackstrap. He isn't opposed to development, and he knows young people who would love to purchase units in the area. This is the first he has heard of age-restriction at Tuscan; these are three-bedroom units, and he wondered how that would be implemented and would carry over.

Jim Cummings, developer of Tuscan Way, said the project isn't on a 3-acre parcel; it is 19 acres. On Hamlin Road, there are .25 acre or .5 acre lots; his units will have more space. He said his development has 4 septic systems designed to handle all the septic from the units, as well as 4 complete redundant systems to back up the primary systems. Locating the units on 3 of the acres means that only one abutting property will see the units seasonally; there is no visual impact on anyone else. The traffic will primarily go onto Blackstrap Road; peak traffic will amount to 6 cars/hour. That is 1 car every 10 minutes. He has built many subdivisions and he knows that no one wants their backyard to change. They have had three separate meetings at the Planning Board, and they listened to the public at each meeting. They have worked to design the project to meet the public's concerns and what they felt the Town wanted. The original design included 13 single-family dwellings and 12 condo units; when that was struck down, they redesigned it. He has not been notified by the Town of any changes that would impact his project. Changing in mid-stream is not a good message to anyone that might want to do business in town, nor to anyone residents wanting to make changes to property they have owned for years. The proposed changes are counter to the input from residents that were included in the comp plan; the thoughtful process that created the amendments is being called a mistake. This is what the Town wanted. He said this is not a 55+ age-restricted development; it is designed to appeal to people of that age that want to down-size and stay in Falmouth. Half the units are 2-bedroom, half are 3-bedroom. They are designed to have a 1<sup>st</sup> floor master with a guest room and an office upstairs.

Kate Heck of Falmouth Road played in the field where one of the developments is proposed; she grew up in this neighborhood and this isn't the Falmouth she grew up in. It is dangerous for kids on the roads. She said the amount and speed of the traffic are a concern. Adding more people and more traffic into that area will make it more difficult. This neighborhood is all ledge and she was concerned with the blasting. She supported the retroactive moratorium.

George Tarbox of Middle Road has lived in Falmouth since 1971. He served on the Fire Department for 40 years. He supported the moratorium with retroactivity. He asked the Council not to pass this mistake onto the residents. it would destroy their residential neighborhood. He described the area around his neighborhood; it is very wet. He said they should take this back and redesign it, but do it for everyone. He said he was in business and lost money sometimes; that is what business is about. He asked the Council to consider the residents.

Alex Hutcheon of Middle Road has lived in Falmouth for 50 years; he selected his home for the character of the neighborhood and the fact that there would be no development in that area. He supported the moratorium and the retroactivity. He didn't want a couple developments to get through as "unintended consequences" before they changed things.

Marie Flaherty of Woodlands Drive thanked the Council for making the changes in 2016. They were in conformance with the comp plan and provided an opportunity for growth and development, allowing people to come or stay in Falmouth by providing for more density. The proposed condos are well-designed, attractive homes. She spoke about the people who would likely purchase in Tuscan Way, quiet, retired couples or young professionals. The Woodlands has condos that fit in the character of the neighborhood. If they make this retroactive it will significantly hurt the developer of Tuscan Way. This parcel is 19 acres, not 3 acres. The development is not restricted to 55+, but the style attracts that demographic. She asked the Council to do what was fair and not pass a retroactive moratorium.

Tom Crosby of Brook Road wanted to find out what would happen to their property values as a result of the development on Tuscan Way. He urged the Council to consider the retroactive moratorium.

Edie Fontaine of Brook Road has lived in Falmouth her entire life. She grew up on Middle Road. She is a commissioner on the Maine Real Estate Commission and believed that part of the draw of the Tuscan Way development would be the school system. She thought it was absurd to suggest otherwise, and felt the 3 bedroom units were designed to attract young families. She thought people would turn down Hamlin Road; she has considered using Hamlin herself. She understood that a lot of money has been spent, but also didn't feel that this was targeted at them. She was a realtor but was not interested in 32 units.

Donna Crimmin of Brook Road is at the corner of Brookside and Brook. She hears about close accidents all the time at Brookside. The town cut down three trees along her property to improve sight lines for traffic. She didn't want a development to connect to Brookfield.

Judy Cosby lives on the corner of Brookfield and Brook and argued that people move to Falmouth for the schools. It was improbable to think that people would move into 3 bedroom homes and not impact the schools. She remembered all the portables behind Lunt; the same thing will happen at the new elementary if they keep thinking that more density is better. She thanked the Council for considering that a mistake was made and doing something about it.

Chantel Scott of Highland Lake said the Council has to be fair; the retroactive moratorium is fair. Slowing down and making the right decision will prevent them from having unintended consequences twice. She is a developer; she took a single-family home and turned it into a two-unit, but she did it in keeping with the character of Falmouth. This is a way to have affordable housing in Falmouth; in keeping with the character of the neighborhood.

Christopher Hickey of Greenway Drive served on the Planning Board until December. He clarified that the Board's role is to enforce the ordinance; the fact that a project has received technical approval by the Board is not to say that it is a good project. The role of the Council is to be a rule-making body and develop the vision of Falmouth. Builders and developers are unfairly vilified; most people live in a home that was built to make a profit. He thought there are sending a message to developers that is negative, but for everyone they turn away there are two others that think they can make money with a different approach.

Phil DiBiase of Middle Road is a real estate appraiser, has been doing it for 33 years, and is a certified Maine assessor. He is also a broker. He said no one can make a statement that values will go down; no one knows that. A neighbor just split his 1.7-acre lot under the new zoning and is selling it for far more than it was valued. He supports property rights. The change in zoning does not mean that value has gone down; likely it has gone up.

Chair Hemphill closed the public forum.

Councilor Farber clarified that the goal of the zoning ordinance changes was not to create more development, but to direct it away from the rural areas and toward the growth areas. They discovered that people valued the rural areas. When they looked at it, the building permits were being pulled in the rural areas where there is no water, sewer, or larger roads. Growth is happening in Falmouth and this was intended to shift and orient the growth where there was infrastructure. Falmouth has growth caps of 65 building permits per calendar year.

The new zoning amendments add an additional growth cap onto the rural area so that only 26 of the 65 permits can be located there. This controls the pace of growth.

Chair Hemphill pointed out that they actually don't know how these proposed developments would impact the town; they don't have any experience with these in town.

**Item 3            Introduction of an ordinance to establish a moratorium on two-family and multi-family subdivision development in certain residential districts.**

A public hearing was scheduled for October 23.

Councilor Ferrante asked if the moratorium and retroactivity moved as a piece. Ms. Stearns said the moratorium is the body of action; the question is whether to attach retroactivity to it. The language is drafted to include a statement that the date of applicability is subject to debate by the Council. The can move forward with it, or could strike it.

Atty. Tchao explained that Council has a couple options; they can introduce the document as written with the retroactivity; they can strike the retroactivity tonight (paragraph 2) and move forward with that moratorium; or they can consider the document as two introductions – of a retroactive moratorium, and as a moratorium that is prospective. They can move to public hearing with both options.

The Council discussed the process moving forward and agreed to move forward with both options. Only one option would be approved.

Chair Hemphill moved to enter recess; Councilor Farber seconded. Motion carried 6-0. The Council entered a short recess.

The Council resumed at 8:10 pm.

Councilor King explained that the public hearing on October 23 will be on two options: a moratorium with retroactivity, and a moratorium without retroactivity. The goal is to make it clear that it is possible to have a prospective moratorium and it is also possible to have a retroactive moratorium. There will be one public hearing for both options. This will provide clarity for all concerned.

**Adjourn**

Councilor King moved to adjourn; Councilor Ferrante seconded. Motion carried 6-0.

The meeting adjourned at 8:19 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary