

Town Council Meeting Minutes November 13, 2017

The meeting was called to order at 6:00 pm.

Roll Call

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

Councilor Farber was absent.

Item 1 Order to go into Executive Session pursuant to the Laws of Maine to discuss legal rights and duties with the Town's attorney, pursuant to 1 M.R.S.A. § 405 (6) (E).

Councilor Svedlow moved to enter executive session; Councilor Kitchel seconded. Motion carried 6-0.

The Council returned from executive session.

Councilor Svedlow moved to amend the Council agenda in accordance with Section 16-c of the Council's rules to take Item 10 before Item 5; Councilor King seconded. Motion carried 6-0.

Item 2 Resolution to recognize the contributions of Robert G. "Bob" Shafto, Open Space Ombudsman, to the Town and its open space program.

Chair Hemphill read the resolution into the record and spoke about his experiences working with Bob. The Town will long appreciate the time Bob has invested.

Chair Hemphill opened a public comment period.

Ted Asherman of LMAC said all this takes vision and tenacity and gave examples of Bob's work.

Cathy Breen, State Senator for Falmouth, spoke about the referendum that approved the *Greening of Falmouth* in 2007. She spoke about meeting Bob and her gratitude for his support. She said Bob has a vision, but more importantly, has an extraordinary plan, which included deliberate goals and a guide for rating property for acquisition to help the Council make decisions. She spoke about how the relationship between the Town and the Land Trust has improved during Bob's tenure.

Dave Gagnon of Field Road said he has worked with Bob for 11 years. Bob has built a coalition of people to work together and plan out the trails. He talked about the evolution of the committees that have worked on open space. He appreciated Bob's leadership and wealth of knowledge.

John Adelman of Falmouth Road has been involved from the beginning and served as the President of the Land Trust. He thanked Bob for his work.

Charlie March of Blackstrap Road spoke about the changes that have happened since he moved to Falmouth. Development was causing trails and open spaces to close. Thanks to Bob, hunting, biking and hiking can happen from one side of Falmouth to the other.

Bob Shafto thanked everyone for the appreciation and acknowledged all those who have helped along the way, especially the people of Falmouth, the Town Council and Town staff, who have continued to support this vision and the efforts to make it happen. He specifically thanked Caleb Hemphill, Ted Asherman and Dave Gagnon who have put in hundreds of hours each to build trails as well as many other volunteers who have donated their time. This was a collective, community effort.

Chair Hemphill closed the public comment period.

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

Item 3 Resolution to proclaim 2018 as Falmouth's Tercentennial Year.

Councilor King read the resolution into the record.

Town Manager Nathan Poore discussed the upcoming launch of the Tercentennial celebration at the annual Very Merry Falmouth events being held November 30 - December 2.

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

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

Item 4 Discussion about the Greater Portland Transit District (Metro Bus) preliminary FY 2018 budget.

Greg Jordan, General Manager of the Greater Portland Transit District, gave a presentation on the increase in ridership from 1997 to today. 2016 was the strongest year on record, and they project that 2017 will be slightly stronger than that. Ridership has jumped on the BREEZ service as well. In 2018, they are expanding west to Gorham to serve the USM campus and adding a line from Westbrook to South Portland. He said they will add electronic fare collection soon, and will add new busses next year. Wi-fi will be available on the busses next summer. He spoke about improvements to, and the addition of, some bus stop shelters. He discussed the budget for next year; this budget includes a fare increase in 2018. The federal funds are increasing, which leads to a decrease in the local share. Falmouth's share will increase 1.7% for 2018.

Mr. Poore said service in Falmouth will be reviewed in the future, and possibly expanded. He discussed the process if the Council objected to the budget. The Council had no objections to the budget.

Item 10 Ordinance to establish a moratorium on two-family and multi-family subdivision development in certain residential districts.

Chair Hemphill explained that the Council can approve this moratorium with or without retroactivity.

Councilor King moved the ordinance with retroactivity; Councilor Kitchel seconded.

Councilor King felt the language explains the rationale well. She stated her support for the comprehensive plan and its call for diverse housing. Should this measure pass, she voiced her support for correcting the error that created this issue.

Chair Hemphill agreed; the Council needs to step back and reevaluate the consequences of some of their growth ordinance. He was interested in a speedy and workable solution for all parties.

Councilor Ferrante said she hoped they would all commit to doing this quickly. She didn't think there was anything wrong with the amendments passed in July 2016 except that there was clearly a mistake with regards to the duplex and multi-family buildings and it needs to be corrected. She hasn't seen anything that showed that this was the intention of any of the committees or people that worked on the amendments.

Councilor Jones agreed with Councilor Ferrante and supported the retroactive amendment. He didn't want this to be the first step backwards from growth or development. He liked the comprehensive plan and wants to move forward. This moratorium fixes this specific problem.

Councilor Kitchel supported the retroactive moratorium. He isn't against development, but was concerned with the fit of these neighborhoods. Once these developments move forward, they are permanent. This will buy the Council some time to review this ordinance and provide clarity on what they want to see happen here.

Motion carried 5-1 (Svedlow).

The Council discussed the next steps to address the problem. Councilor Ferrante requested an introduction by January 23. Mr. Poore proposed that the Council hold workshop meetings at 5:30 pm before the next two Council meetings to work on this item. The Council agreed with this plan.

Item 5 Public hearing on an ordinance to establish a new moratorium on retail marijuana establishments and retail marijuana social clubs.

Councilor Jones explained that this is an update to the previous moratorium. The ad-hoc Retail Marijuana Committee will offer a report to the Council later in this meeting.

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

Councilor King said this moratorium will expire in April 2018; she asked if they will have to renew it.

Mr. Poore said they can renew this more than one time, and likely that will be necessary. In order to pass an ordinance prior to its expiration, they would have to hold an introduction in February 2018.

The order was scheduled for November 27.

Item 6 Public hearing on a conditional rezoning for the construction of a Tier III Personal Wireless Facility on Falmouth Road, Map-Lot R04-022.

Chair Hemphill opened the public hearing.

Scott Anderson, representing Verizon, said they have been reviewing the sight distance requirements for the curb cuts on Falmouth Road and have determined that they need to move the entrance to the drive 12 feet to the west. He pointed out that condition 3 caps the maximum height of the monopine to 107 feet; the tower is 110 feet and the monopine branches will reach above that. 107 feet is the antenna centerline. He argued that this conditional rezoning only pertains to the portion of the parcel that they will impact and their understanding was that the conditions the Council would impose would seek to mitigate the impact of their project only. Conditions 4 and 5 impose limits on the rest of the parcel beyond what Verizon is impacting; any cutting or clearing the landowner might want to do would be limited by the DEP's regulations already. Condition 5 as drafted removes any residential use of the remaining acreage unless the landowner comes to the Council for an amendment. He didn't think this was the intent of the wireless ordinance. He asked them to allow any use allowed under the Farm and Forest zone without requiring the landowner to return to the Council. He will submit a redline draft of the conditions with their requested changes to staff.

Elizabeth Klebe of Falmouth Road read comments from her neighbors Ann & Walt Allan into the record. They objected to the placement of the driveway due to concerns with the sight lines. Ms. Klebe said she lives on that curve and said it will be dangerous to allow reduced sight lines, for both those who are using the drive as well as drivers on the road

Kurt Klebe of Falmouth Road said this is a property that merits the Council's review for conservation purposes. In 2011, there was an application to the Land for Maine's Future that included this parcel and others as a unfragmented wildlife habitat. The Town, Land Trust, and the landowner all agreed that this land was worthy of conservation in 2011. The ordinance recognizes that this kind of use merits special consideration and includes the ability to allow this kind of use while restricting other kinds of uses. He asked the Council to review what the landowner will receive as a result of this development. There is likely a significant financial benefit to the landowner that is not part of the record so it didn't see unreasonable to him to request that the landowner concede the ability to develop. He pointed out that, if the Council were to require the landowner to conserve the remaining land, the landowner could receive another benefit in the form of a conservation easement. He said that the ordinance has a required sight distance for access roads

similar to this one of 350 feet. This is a dangerous curve and they have significant concern about an access drive here causing accidents.

John Adelman of Falmouth Road owns property that abuts this parcel. He thought the fact that the town thought this parcel worthy of conservation in the past should be considered at this point. He hoped the town would be visionary in the way they address these contract zone changes.

Sean Mahoney of Falmouth Road agreed that this is a very dangerous curve and there have been very bad accidents here. If anything is going to go in here, they need to take the most precautionary approach and make sure there is enough sight line. He didn't see any reason why they shouldn't use the 350 feet instead of 305. He supported conservation land, but the landowner has the right to do whatever they want with the parcel. He thought it was the Council's obligation to think about both what they are giving and further restrictions; he saw no problem with condition 5. Further development would require some significant changes beginning with the road access which also argued for requiring the 350 feet of sight distance now.

Chair Hemphill closed the public hearing.

Councilor Kitchel asked how often there would be traffic to the tower; Mr. Anderson said once construction is complete the tower will be visited once per month on average by the Verizon technician. It will be gated and they would provide public safety with access.

Councilor Svedlow asked about the relocation of the drive and the sight lines. Mr. Anderson said the drive is now at 350 feet on both corners along with a 50-foot separation from the intersection with the drive across the street. One of the conditions of the Council was that they comply with the DOT standards and they have now done that.

Mr. Poore said the DOT standard for a 35-mph zone is 305 feet; the town's standard for subdivision and site plan review projects is 350 feet. The project now exceeds the DOT standards and meets the town's standard.

Councilor King pointed out that, as a conditional use, this is a use that is not typically permitted in this area. There is a give and a get to this application, and it is the Council's responsibility to act in the best interests of the Town. They have been tough about the egress, received access for another town antenna on the pole, and the public will benefit from better cell service. She felt the ordinance allows them to ask for buffers and to protect open space. She thought other abutting landowners were willing to work with the town if they were able to ask this landowner for some protection of some acreage.

The Council will vote on this item after the MRA hearing at the Planning Board.

Item 7 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 Svedlow moved the ordinance; Councilor King seconded. Motion carried 6-0.

Item 8 Ordinance to amend the Zoning and Site Plan Review Ordinance Sec. 19-23.11 Master Development Plan Time Limits, in order to extend the Tidewater Master Development Plan an additional one year.

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

Item 9 Order to establish a new committee, to be called Highland Lake Leadership Team, and to approve the committee's purpose, membership, meetings and procedures, and charge.

Mr. Poore explained that this will be a join committee with the Town of Windham and the Highland Lake Association (HLA). The team will look at the issues surrounding the current water quality at the lake and create a foundation for governance of the lake moving forward. He recommended a combination of town staff and a councilor to serve on this committee when appointments are made.

Chair Hemphill opened a public comment period.

Dennis Brown, a resident of Falmouth and a member of the HLA, supported moving forward with this. The lake is in trouble. He read an email from the DEP that urged them to reduce phosphorus that goes into the lake to address the algae bloom. He encouraged the Council to move forward as fast as they can. There is benefit to the two towns working together on consistency in the ordinances that affect the lake. He spoke about his concerns regarding development around the lake and some methods other towns in the region have used to address it.

Chantel Scott of Rockaway Road asked if there is a timeline for appointments to the team. They need the members appointed soon. Councilor Svedlow said the appointments committee would do it as soon as possible.

Chair Hemphill closed the public comment period.

Mr. Poore said he and Kimberly Darling, Energy and Sustainability Coordinator, have been meeting on this issue so far. He recommended that they consider a member of the conservation commission as well. The Council agreed with this suggestion.

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

Item 11 Report from the ad-hoc Retail Marijuana Committee.

Councilor Jones explained that there are five different uses allowed under the state's law: growing, manufacturing, testing, retail sales, and social clubs; and the Town needs to decide whether to allow any or all five, and if allowed, where they should be allowed in town. The committee has heard input from the school department, police, code enforcement, and Rep. Teresa Pierce. Of those five uses, the committee still needs to review growing and manufacturing, but have determined that testing facilities could be allowed, but retail sales and social clubs should not be allowed in town. They are waiting on the State of Maine to finalize rules and will return to the Council with suggestions on growing and manufacturing at a later date. He asked whether the committee should take a hiatus while they wait for further information from the State.

Councilor King felt they should continue; they don't know how rapidly the State might move.

Councilor Svedlow and Chair Hemphill supported the committee continuing to make progress.

Adjourn

Councilor Svedlow moved to adjourn; Councilor Kitchel seconded. Motion carried 6-0.

The meeting adjourned at 9:18 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary