

Town Council Meeting Minutes December 11, 2017

The meeting was called to order at 7:04 pm.

Roll Call

All Councilors were present and answering roll call.

Pledge of Allegiance

Chair Hemphill led those present in the Pledge of Allegiance.

Item 1 Public Forum

State Senator Cathy Breen and State Representative Teresa Pierce presented a legislative sentiment to Deputy Clerk Linda Case, who received the 2017 Deputy Town Clerk of the Year Award from the Maine Town & City Clerk's Association.

John Winslow of Gray Road has attended CDC and Council meetings at which zoning density was discussed and pointed out that there hasn't been an opportunity for the public to comment. He asked the Council to pause their discussions and get public input.

Fred Chase of Stagecoach Road said that growth areas should be served by sewer and public water. RD covers areas that do not have public water; he didn't understand why they would want to direct growth to those areas. He said density should be determined by the ability of the soils to accommodate septic systems. He felt the Planning Board's charge should be reviewed; they should be able to accept or deny subdivisions based on a number of criteria. He said the new allowance for accessory cottages already provides for increased density and he felt this was sufficient. He said the old ordinance worked fine and they should go back to it.

Item 2 Consent Agenda

- **Order to approve the minutes of the November 13, 2017, Town Council Special Meeting.**
- **Order to approve the minutes of the November 27, 2017, Town Council Workshop Meeting.**
- **Order to approve the minutes of the November 27, 2017, Town Council Meeting.**

Councilor Svedlow moved the consent agenda; Councilor King seconded.

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

Motion carried 7-0.

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

Councilor King reported that the kickoff of the Falmouth300 celebration was a great success and thanked Tyler Technologies for sponsoring the fireworks. *The Story of Falmouth* history exhibit, sponsored by Leavitt and Sons, is now being displayed at Falmouth Town Hall. Richard Blanco, the inaugural poet, will open the lecture series on January 16 at the High School.

Councilor Kitchel said the Finance Committee will meet this Wednesday at 5:30 pm.

Chair Hemphill said ecomaine is looking for nominees for eco-excellence awards; the deadline is January 19.

Councilor Farber said the CDC is meeting on December 21 at 5:30 to discuss temporary signs and again on January 4 to discuss the recommendations of the Route 100 committee.

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

Councilor King presented the appointments report.

Councilor Svedlow moved the slate of nominees; Councilor Farber seconded.

RE-APPOINTMENTS

Board of Assessment Review – Richard Olson & Tim O'Donovan

Board of Zoning Appeals – Nathan Smith

Conservation Commission – Sarah Boudreau, Susan Gilpin & Jerry Goodall

Economic Improvement Committee – Ethan Gamage, Bill Lunt & Mindy Schwartz

Harbor/Waterfront Committee – Richie Garrett & Paul Dobbins

Land Management & Acquisition Committee – Ted Asherman

Long-range Planning Advisory Committee – Paul Bergkamp & Rebecca Casey

Parks and Community Programs Advisory Committee – Sally Sandler Bitan & Janet Lane Dye

Planning Board regular members – James Kelley & Thomas McKeon

Recycling & Energy Advisory Committee – John Haley

Shellfish Conservation Committee – Donna Cheney, Richie Garrett & Dave Skillin

APPOINTMENTS

Planning Board alternate member – Seth Blanchard

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

Motion carried 7-0.

Item 5 Order to amend the Council Rules, Policy Two regarding the appointments procedure.

Councilor King explained the two recommended amendments: the first would remove the chair of a committee from the team interviewing a potential new volunteer, and the second would create a policy where a volunteer who has served two consecutive terms will be re-interviewed along with new applicants. This would help create an opportunity for new volunteers to serve.

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

The item was scheduled for the January 8, 2018 meeting.

Item 6 Order to amend the previously approved memorandum of understanding (MOU) between the Town and the Library, dated September, 2016, changing the required date for the Library to report to the Town Manager on its fundraising efforts.

Marsha Clark, chair of the Library Board of Trustees, reported that the capital campaign has raised over \$2.2 million and have approximately \$590,000 left to raise. They just received a \$250,000 challenge match; for every dollar they raise in cash or pledges until December 31, this anonymous donor will match it up to the \$250,000. Given the number of people in town, and the generosity of the people in this town, this is feasible.

The request they are making is not to extend the fundraising deadline, but to grant them an extra six weeks to file their fundraising report. They want to provide the town with a fully audited report, which will take about six weeks to complete, and they expect they will be receiving pledges and donations right up to the last day.

Councilor Farber supported the request; this is a practical matter. No one considered how they would fundraise right up the deadline and also prepare a report at the same time.

Councilor Svedlow wondered about adding an additional 2 weeks to the request, in order to make sure they have enough time.

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

Councilor Farber moved to amend the MOU to read “on or before 8 weeks”; Councilor King seconded. Motion carried 7-0.

Item 7 Introduction of an application from Homestead, LLC for a contract zone to develop a multi-lot development on Gray Road and a discussion on progress to date.

Matt Ek of Sebago Technics discussed their previous concept plan, 20A, and the changes that have been made. He displayed a plan that showed what a development with the same number of units would look like under current zoning. Their new concept plan, numbered 22, removes the apartment units, and has additional single-family units and some duplex units. This reduces their development from 151 units to 119 units total and would remove the need for some of their waiver requests. He said the Maine Turnpike Authority agreed to grant a license agreement to the Town to connect a path from this project to Marston Street to provide a trail connection. He said this plan provides trails, parks and open space, none of which would be required under the current zoning. He said the sewer would connect to the Mill Street pump station, which would have adequate capacity. They would provide landscaping, street trees, and a buffer between the neighborhood park and the abutting property. A full landscaping plan would be addressed during the Planning Board phase. He asked the Council for feedback on plans 20A and 22.

Dave Chase, developer, spoke about the need for this type of housing in Falmouth. He was interested in which plan the Council preferred: with or without the apartments.

Councilor Kitchel proposed that the CDC meet to review the concept plans.

Councilor Farber asked for a clear list of the exemptions from the ordinance they would need for each concept plan. Mr. Ek said the new concept plan would not require a reduction to the residential density allowance from 10,000 sf to 7,500 sf; the exemption from the residential growth permits for 18 units per phase, the exemption for the 48 apartment units, and the exemption for the 12-unit buildings.

Councilor Farber asked if it would still need the height exemption; Mr. Ek said yes, for the commercial buildings, since they might have residential apartments above the retail spaces and would need additional height for them.

Councilor Svedlow said he supported concept plan 22; it addresses a lot of what they want in the area. This type of development fosters community. It reminded him of development in the Flats.

Councilor King said her biggest concern was the exemption from the growth cap; reducing that request would be wise. Developing the retail would lead to some apartments. She wanted there to be a community feel to this.

Councilor Farber did not support exemptions from the growth cap so she appreciated plan 22. She wanted them to think about other residential districts and how they are laid out in designing this one. She asked about the 8-foot side setbacks; RA currently allows for 10 foot setbacks. She asked about the reduction of the required minimum net residential area from 5000 sf to 0.

Mr. Ek explained that there is a lot of steep slopes on the property and a lot of small lots. If a majority of a 5000 sf lot is sloped, they wouldn't be able to build on it. They are filling a very small amount of wetlands with this project.

Councilor Farber asked about limiting this request instead of applying it to every lot; Mr. Ek said not every lot needs it but it is hard to pick and choose which lots get it and which don't, since they haven't done final engineering yet.

Councilor King asked about the color coding on the plan; Mr. Ek explained that the building envelopes are shown in pink, and they showed conceptual buildings within the envelopes in purple. These are all conceptual.

Councilor Svedlow asked about the state permitting that would be required; Mr. Ek said they will need Army Corps approval for some wetlands filling, a DEP full site lot permit and a traffic movement permit from DOT. Councilor Svedlow said there is a whole other level of review that this development will be subject to.

Councilor King asked when the DEP process would start; Mr. Ek said as soon as their process with the Council is complete, and during their Planning Board process.

Chair Hemphill asked if there were any changes to the phasing; Mr. Ek said they are still looking at three phases. Removing the reduction in the growth permits may slow the project down. They are still looking for the reductions for the 55+ housing and the entry-level housing.

Chair Hemphill asked about the traffic study; Mr. Ek said the study is complete but the movement permit is not. They submitted a response to the town's traffic peer reviewer a couple weeks ago. They have reviewed the traffic timing in order to optimize it and reduce the stacking at the intersections.

Councilor Kitchel was glad to see the variety of housing styles provided. He asked about providing access to park C behind the homes where the "eyebrow" used to be. Mr. Ek said there is access off the intraurban trail as well as a 24-foot easement on the Route 100 side of the park. They would review adding additional access.

Councilor Farber asked about the easement. Mr. Ek said staff requested that to provide access for the lot behind the park in case of future development. It is a paper street to provide connectivity.

Councilor Farber asked about the requirement in the Route 100 zoning that principal buildings be separated by the height equivalent of the taller building.

Amanda Stearns, Land Use Policy Specialist, thought it was a design choice.

Councilor Farber was unsure how to review the streets and the proper street standards. Ms. Stearns spoke about designing complete streets that would serve all kinds of uses, including bicycle and pedestrian traffic; the current street standards in the ordinance were designed 30 years ago and are vehicle-centric. She spoke about designing each street in the development based on its use; the road past the commercial area could have a more village feel, with on-street parking, while the streets in the denser neighborhood area would have traffic calming measures to make them safer. She asked whether the Council wanted to have the streets fully designed at this phase so that it was included in the contract zone, or to allow it to be finalized in the Planning Board phase.

Mr. Ek said reducing the streets also reduces pavement and stormwater runoff.

Councilor Farber asked how they would like to notice abutters of the process. This is a big project and she wondered how large a range they would like.

Councilor Svedlow pointed out that there would be another public process associated with the site law permit as well as with the Planning Board process. Each of those steps would include public notification and comment. He was concerned with how much they were asking the developer to do and how long it is taking.

Councilor King said it is a big project and there are a lot of people that are interested and will feel the impact. She felt it was important for the Council to make sure it was addressed adequately. Chair Hemphill felt they should notify the residents of Brook, Mountain and Leighton roads.

Mr. Poore summarized the details that the Council should address: street trees and esplanades, since the assumption is that the streets would be turned over to the town in the future. Reducing the right of way to 40 feet is good, but he wondered if there was a way to add an additional 10 feet as an automatic construction easement in case they need additional room to work on utilities. He met with the Town's wastewater engineer and they think that the town can complete the Route 100 sewer work at a reduced cost based on how this development is designing their system. He spoke about some details the staff are still working on, including a provision that would prevent three of a housing type in a row on a street, and the left-turn lane into the entrance at Harmons. He spoke about the sewer fee and recommended using the current fee. Mr. Poore thought they will still need some flexibility on the age-restricted homes and the growth permit; while they will have a large number of age-restricted homes, they won't meet the percentage test for the ordinance. They have asked that each age-restricted home would be a new exemption.

Councilor Farber asked to confirm that the Council's consensus was that they preferred plan 22; the Council agreed with that.

Councilor Farber wished there was a way to do the apartments without the 12 unit buildings and an exemption from the growth cap.

Councilor Kitchel asked the next steps for this project. Ms. Stearns said the next step is for staff to work with the applicant on the draft contract zone agreement. The applicant has agreed to provide a retainer for the town's attorney to work on the draft agreement. The Council should decide whether to hold a public hearing with or without the contract zone agreement drafted.

Councilor Farber asked about the MRA notice requirement. Ms. Stearns said a draft of the agreement and a map of the area to be rezoned is required to be mailed to direct abutters only, and a notice published in the paper. The Council can ask for a more robust notice. This wouldn't add an extra hearing, but expand the notice that is sent. Councilor Farber requested they expand it to 500 feet and would prefer that they hold the public hearing when the draft agreement is available.

Councilor Svedlow asked about whether a joint hearing with the Planning Board and Council would be possible; Ms. Stearns said it is allowed under the ordinance, but she was concerned about the practicalities of getting both boards together. Councilor Farber supported holding two different hearings, since that is how they always do it.

The Council directed staff to work on a draft contract zone agreement based on concept plan 22.

Item 8 Ordinance to establish conditional rezoning for the construction of a Tier III Personal Wireless Facility on Falmouth Road, Map-Lot R04-022.

Scott Anderson representing Verizon Wireless discussed the recent MRA hearing at the Planning Board. At the last Council meeting they requested some changes to the draft conditions and restrictions: the new location of the driveway complies with the DOT standards for sight distances, the tower height is in fact 110 feet tall instead of 107 feet tall and they asked for language regarding returning the interest as well as the principal on unused escrow funds. In their new exhibit A, the landowner identified a section of the parcel that could be put into conservation easement. This portion is adjacent to the abutting conservation land. They also outlined a 50-foot no-cut buffer around the entire property. The idea would be to allow public use for this land. The terms and conditions of the public use would be worked out with the landowner and the Town, but may mirror those of the public lands it abuts. He reminded the Council that this parcel would only be visited one time per month. He pointed out that a tier III tower is a permitted use in Farm & Forest; the purpose of the conditional rezone is for the Council to review whether they actually need the tower. The

conditions should only apply to the portion of the parcel they are using; condition 5 would limit the entire 82 acres. There are a number of remaining uses for the landowner on the parcel but any additional development would be reviewed by the Planning Board. They don't want the landowner to have to come back to the Council to rezone the parcel for a use that would be allowed by the underlying zoning.

Ms. Stearns said the Council has three versions of a draft rezoning including the original conditions and restrictions, a version with the conservation tract added, and a version presented by the applicant. Both staff and the Town Attorney have recommended that the rezone apply to the entire parcel; this would functionally add an additional use and not remove any uses that are permitted by the current zoning.

Councilor Svedlow asked what the impact would be of rezoning the parcel versus the lease area only. Ms. Stearns said it would add a use to the parcel; it is an administrative burden to track a property with a partial rezoning; also if the parcel were to be divided, it would have to be reflected in the deed.

Councilor Svedlow said it would not allow for an additional tower to be located on the parcel; Ms. Stearns said no, that would require an additional rezoning by the Council. This rezoning allows one tower to be constructed as presented to the Council at this meeting. She said she agreed with the change to the tower height; that is the height that has been represented throughout these discussions. Staff do not agree with any changes to item 4; it should remain restrictive to both parties on the whole parcel in order to address the Council's concerns on impacts. She suggested redrafting item 5 and removing the further use restriction on the driveway, since it is now meeting the town's most stringent sight distance standard. She pointed out that they have nothing in writing that Mr. Anderson has right, title and interest to speak on behalf of the landowner with regards to the conservation property.

Chair Hemphill asked if the conditions and restrictions were reviewed by legal staff; Ms. Stearns said the original document was drafted by staff and the Town Attorney. The proposed amendments were not so complex that they needed further legal review.

The Council asked staff to draft a finalized version of the conditions and restrictions and informally tabled the item until later in the agenda.

Item 9 Discussion about permitted land uses on Mackworth Island and a request from the Maine Educational Center for the Deaf and Hard of Hearing and the Disability Rights of Maine.

Mr. Poore explained that Mackworth Island is zoned Farm & Forest. There is a request to locate a business on the island. The office is an advocacy law firm with 12 staff that expects 10-15 clients per day. This would be a separate entity and would qualify as a business and professional use, which is not allowed in Farm & Forest. The buildings out there are not being used, and are beginning to deteriorate. Having a tenant in the building will help. It will take the State some time to determine a long-term plan for use of the property. Having a tenant as caretakers of the property would make sense. The easiest way to address these issues is to create a narrow zoning overlay that would allow this use only, and to put a sunset provision on it. The three-year timeframe corresponds with the tenant's lease, and gives the State and the Town time to research and draft a solution.

Councilor Kitchel supported the plan.

Councilor Farber asked whether it made more sense to rezone the island entirely. Mr. Poore said they could do that. He would recommend mirroring Farm & Forest and just adding this very narrow use.

The Council supported the idea, and directed staff to draft a method to address it, either by overlay or by rezoning the island.

Item 10 Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).

Councilor Svedlow moved to enter executive session; Councilor Farber seconded. Motion carried 7-0.

The Council returned from executive session and resumed item 8.

Item 8 Ordinance to establish conditional rezoning for the construction of a Tier III Personal Wireless Facility on Falmouth Road, Map-Lot R04-022.

Mr. Anderson argued against the prohibition on any further clearing in the vernal pool buffers; even if the property owner does a two-lot subdivision he would have to widen the road and there might be some small minor impacts. In discussions with staff, staff recommended that if there were any compromise on this condition, there should be limits detailed to further impact. They would therefore ask that condition 4 state that impacts to the vernal pool buffers would be limited to what Verizon is doing for the cell tower and would also include an allowance for the property owner to do a subdivision of no more than 5 lots. This would still be subject to DEP restrictions.

Ms. Stearns said 5 lots would be a major subdivision requiring 24 feet of pavement; she suggested language that would allow something that could be approved as a private way; that would be 16-foot-wide road for two to three lots.

Councilor Svedlow suggested striking “or the property owner” from condition 4; he felt the regulations that govern this would be stringent enough already.

Chair Hemphill was surprised that this was the first time they were hearing about possible development on the parcel in the future.

Mr. Anderson clarified that there was no development proposed; the way condition 4 was written prevents any further development, including a single-family dwelling, without additional rezoning. This was a compromise suggestion to allow for some development within certain limits.

Councilor Ferrante agreed with Councilor Svedlow.

Councilor Svedlow moved the order as redrafted by Ms. Stearns, and to strike the term “or the property owner” from paragraph 4. Councilor Ferrante seconded.

Councilor King asked the intent. Ms. Stearns said the original language was reviewed and deemed to be appropriate by the Town Attorney. She felt either option would pass legal scrutiny.

Motion carried 4-3 (King, Farber, Hemphill opposed).

Adjourn

Councilor Kitchel moved to adjourn; Councilor Farber seconded. Motion carried 7-0.

The meeting adjourned at 10:15 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary