

Town Council Meeting Minutes January 22, 2018

The meeting was called to order at 7:02 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

John Winslow of Gray Road said the CDC has been meeting to discuss ordinance changes, and there has been no opportunity for public comment at those meetings. He asked that there be an opportunity prior to a scheduled public hearing. They are working on VMU which is a unique area. Some of the concepts and ideas that are being brought forward have consequences that will affect property owners. He thought they should send out a survey of property owners to get feedback. He wanted people to be aware of ordinance changes before they are approved, and not after the fact.

Item 2 Consent Agenda

- **Order to approve the minutes of the December 11, 2017, Town Council Workshop Meeting.**
- **Order to approve the minutes of the December 11, 2017, Town Council Meeting.**

Councilor Farber amended the December 11 regular meeting minutes.

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

Councilor King moved the minutes as amended; Councilor Svedlow seconded. Motion carried 7-0.

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

Councilor Farber reported that CDC added a meeting for January 31, 2018 at 5:30 to discuss the Route 100 Committee's recommendations. The public is invited to attend these meetings; it is at the committee's discretion to allow public comment at their meetings and they have scheduled public forums about items in the past. They will start their discussions about the Water View Overlay District on February 8 at 7:00am.

Councilor King said the Tercentennial Committee hosted a lecture/reading by poet Richard Blanco last week. It was a wonderful evening and was well attended. The Tercentennial edition of "Falmouth's Got Talent" will be held at the high school on January 28, 2018 at 4pm.

Councilor Ferrante said the FEIC is hosting a business forum on January 30, 2018 at 5pm at the Portland Country Club. There will be a keynote speaker and an opportunity for public discussion.

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

There was no report. The committee will meet again soon.

Item 5 Update from Falmouth Memorial Library on fundraising and next steps for the expansion project.

Marsha Clark, President of the Library Board of Trustees, reported that since she was here on December 11 the library was flooded with donations. They are still accepting donations, and she reported that they have raised more than \$2.9 million, exceeding their goal of \$2.81 million. According to the MOU, anything over their goal goes to either paying off the house or towards the project. They expect that, since their cost estimates are 2 years old, the extra will go toward the project. There were buffers added to the original estimates, but she wasn't sure that they would cover the effects of cost increases and inflation. They feel there were three things that contributed to their success in December; the anonymous \$250,000 challenge match, the public realizing that this was the end of fundraising, and changes in the tax laws and the charitable giving deduction. She talked about other people that raised money for the library; one individual matched donations from her bridge club, another sold Christmas trees on the side of the road. One individual donated \$50,000. It was an amazing outpouring of support. The Board has met with SSA and Ledgewood; they have a strict timeline and anticipate new cost estimates in March and groundbreaking in June. They need to go through Planning Board, Fire and DEP approvals before then. They are still looking for temporary housing for the library during construction; she encouraged anyone with ideas to contact the library.

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

Chair Hemphill explained that due to a misunderstanding and a mistake in the application of Council rules, the Council did not take a formal vote on this ordinance at the last meeting. They had a call to vote after extensive discussion of the item and they took a vote, but that vote was to move the question and not on the ordinance itself.

Ordinance 82-2018, as amended January 8, 2018, carried 5-2 (Ferrante, Svedlow opposed).

Item 7 Order to approve a supplemental appropriation and transfer of \$60,000 from unassigned fund balance for a spraying program on town owned property and public streets to control an infestation of Browntail Moths.

Mr. Poore explained that staff hadn't finalized their review of the bids when the agenda was posted on Thursday, so the item was written to accommodate the highest bidder. Since then, staff have decided to go with the middle bid, Whitney Tree Service, for \$25,000. Unfortunately, this bidder is unable to offer a discount to residents for treatment of their private property because they do not have the capacity to take on the additional work. Staff recommend adding a \$5000 contingency, and that the Council move an order to appropriate \$30,000 total. According to the inventory conducted in December, the browntail infestation has spread from last year.

Chair Hemphill spoke in favor of the staff recommendations.

Councilor Farber asked if the inventory is readily available; she thought people would be interested to know where the spraying will occur. Mr. Poore discussed how the information will be disseminated, including on the website, Facebook, Twitter, email, and in Town Hall.

Councilor Kitchel clarified that the request is for an appropriation of \$30,000; Mr. Poore said yes.

Councilor Kitchel asked if the highest bidder was willing to offer discounts to residents; Mr. Poore said they had offered a discount of up to 30%. He discussed the differences between the bidders' proposals, including equipment and application method. The bidder he chose will use a mist blower, which will use less pesticide and have less impact on pollinators and the public. He spoke with the Cumberland Town Manager, who expressed how happy they were with Whitney Tree Service.

Councilor Kitchel asked how they will protect bees; Mr. Poore explained that they are spraying overnight when the bees are not out, the mist application will dry on the leaves quickly, and they using a pesticide called Conserve that is not as dangerous to other insects. It is designed to dry on the leaf and poison the caterpillar after it is consumed.

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

Councilor Farber moved the supplemental appropriation of \$30,000; Councilor King seconded. Motion carried 7-0.

Item 8 Introduction of amendments to various sections of the Zoning and Site Plan Review Ordinance relative to amending density allowances for two- and multi-family development in the RA, RB, and RD Districts, expanding the applicability of the RCZO District to two- and multi-family housing, and increasing open space requirements for conservation subdivisions in the F and HL Districts.

Councilor Farber said there are three components to this amendment. The Council could keep them as one group, or to break them apart and hold separate public hearings. The first aspect is an amendment to the density allowances. The Council held two workshops on this issue and determined that they should proceed with a maximum residential density for two- and multi-family development in those districts that is equivalent to the maximum density of a single-family home. The second aspect comes from LPAC. In December 2016, LPAC made recommendations to the Council that the set-aside for open space for development in the rural areas go back to 50% instead of 30%; this recommendation came from suggestions from the public. The third aspect also concerns the RCZO. This overlay currently only applies to single-family development; now that the ordinances make two- and multi-family development possible, it is recommended that the overlay be extended to include those types of developments. All these amendments apply to development that is subject to Planning Board review, and not single-family development.

Councilor Kitchel asked if an accessory dwelling unit would constitute a two-family dwelling; Councilor Farber said no. The accessory dwelling is smaller than the primary dwelling and they travel together on the deed. Those would not be impacted by any of these changes.

Councilor King asked about the RA district; the maximum density is 10,000 sf and each unit of a two-family would have to meet that. She wondered if that was possible on a lot in RA.

Ethan Croce, Community Development Director, said that lot development that doesn't go to the Planning Board does not have to meet the maximum residential density requirement. It would need to meet the minimum lot requirements and the minimum net residential area. It is technically possible to have a duplex on a 10,000 sf lot, but 100% of the lot would have to be buildable – no easements, steep slopes, or wetlands.

Councilor Farber said that would only be if it was a single lot being developed. If it was part of a multi-lot development, it would have to go to the Planning Board and the maximum residential density would apply.

Mr. Croce said this amendment would still allow smaller, single-lot, infill opportunities.

Councilor Farber said the Highland Lake district was created as part of the 2016 amendment; it used to be part of RB. Other than creating the new district, they didn't make any changes to the standards. As it stands, it has a 25% density bonus for two-family homes. She suggested they change this to mirror Farm & Forest so there would be no allowance for two- or multi-family homes, or bring it into line with the other districts and take away the bonus. She would prefer to only allow single-family homes in this district in consideration of the water quality issues at Highland Lake.

The Council discussed how to proceed with that suggestion. Councilor Svedlow wanted to engage the Highland Lake Leadership Team on this issue. Mr. Poore suggested they add this to the ordinance review that the Team is already planning to do.

Councilor Ferrante would like to see the items separated. The RCZO piece seemed separate from the density item for her. She would rather see some language that considers the number of lots in a subdivision as opposed to whether they have to go to Planning Board at all in the RCZO discussion.

Councilor Farber wanted to split the amendments into three; it would be easier for the public and the Council. She asked what would trigger the Planning Board review.

Mr. Croce explained that Planning Board review would be triggered by development that triggered subdivision review as defined by State statute, and by any creation of new lots on a previously approved road.

Councilor Farber asked where Councilor Ferrante would suggest putting the trigger for the open space set aside; Councilor Ferrante didn't know, but she didn't want to impact smaller development with a 50% set aside. That is a lot of land to put aside.

Mr. Croce mentioned that LPAC had also made a recommendation on whether smaller developments be subject to a smaller set aside; that is not included in this package, but it was on their list. His understanding was that the Council had set this aside until the new open space plan is complete and would be considered in the future.

Councilor Farber read the LPAC recommendations on a graded set-aside based on the intensity of development: 50% of calculated NRA plus the unsuitable land in the rural zoning areas; 30% for projects involving 3 or more lots with a project more than 1-acre in growth areas; and 0% for projects of 2 or fewer lots with a project area of 1 acre or less in the growth areas.

Councilor Svedlow asked why they wouldn't consider all of that in the RCZO changes. Councilor King felt the task was given to LPAC and they were directed to wait for the Greening of Falmouth.

Councilor Farber thought they should hold the discussion on any changes to the set aside until the new Greening of Falmouth report if changes are going to come out of it. She suggested they schedule public hearings on the density and the two- and multi-family development in the RCZO, but not schedule a public hearing on the set aside until they hear back from LPAC on whether the new Greening of Falmouth is relevant to it. She thought it was the Council that made that determination.

Mr. Poore pointed out that the change to 50% was only for the Farm & Forest and the HL districts. LPAC has a meeting on Thursday night.

Councilor Svedlow would like to see all the open space set aside changes at one time. Chair Hemphill wanted to see it addressed in this Council year.

The Council asked for LPAC to discuss this at their next meeting. A separate public hearing was scheduled for the residential density item and the extension the RCZO to include two- and multi-family dwellings on February 12. They will workshop the set aside of open space at that meeting as well.

Item 9 Introduction of an amendment to Section 19-11.5.9.5 of the Zoning and Site Plan Review Ordinance relative to wall sign lettering size in the VC Districts.

Councilor Farber introduced the item. Maximum lettering sizes for signs were added to this district last year. Larger businesses that have moved into the shopping center since then have expressed a problem with the restriction in relation to distance from the road. The CDC has made a recommendation not to change the maximum size of the sign but allow the permitting authority to take lettering size on a case-by-case basis, considering the business' established logo as well as the size of the building, relationship to the street, etc. This is more in keeping with what the ordinance used to say and gives more authority to the Planning Board.

The CDC has made a note that, even though this amendment is for VC, it should be considered for all commercial districts in the future.

Councilor Ferrante asked why they didn't just leave the size of the sign at 64 sf. She wondered about the subjectivity of this recommendation.

Councilor Kitchel said this was prompted by the new fitness center in the Shaws plaza. The 15-inch maximum letter size is too small to be read from the street because that building is probably set back 200 feet; if it was set back 100 feet it would probably be a different story. The overall size of the sign is in keeping with other signs at the shopping center. Increasing the size of the lettering would make it easier to read.

Councilor Ferrante supported the 15-inch lettering; she was questioning the subjectivity of section g. She pointed out that the Shaws sign is far larger than 64 sf. Councilor Hemphill said a 64 sf sign is 8x16 in size. It isn't very big.

Councilor King said section g isn't specific; most of the other standards contain specifics. She wondered about the effectiveness of this provision and whether the staff and boards would struggle to apply it.

Councilor Farber said this language is very similar to what was in place in the ordinance prior to the changes mandated by Reed v. Gilbert. Legislating this kind of thing, without knowing the specifics of the property, feel arbitrary. When the staff and/or the boards are looking at a specific project, they can make decisions based on that unique situation.

Councilor Svedlow suggested removing the first sentence of g.

Mr. Poore thought that language honors the original vision of bringing the buildings to the road in VC but they could probably get away with it.

Councilor Ferrante felt section f covered it. She thought the language as it is causes more confusion than necessary.

Councilor Hemphill saw section g as providing guidance for the Board.

In response to Councilor Kitchel, Mr. Croce said there are many factors that determine which signs are reviewed by Planning Board. It is size-dependent. The current Planet Fitness sign went to Planning Board and was approved.

A public hearing was scheduled for February 12, 2018.

Councilor Farber asked if this came through FEIC. Councilor Ferrante said no, it came directly to her. FEIC has a review of sign ordinances on their workplan for this year.

Councilor Farber would like to hear FEIC's input if they have a meeting scheduled between now and a vote on this item.

Item 10 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 Svedlow moved to enter executive session; Councilor Farber seconded. Motion carried 7-0.

The Council entered executive session at 9:52 pm and did not return.

Respectfully submitted,

Melissa Tryon
Recording Secretary