

# **Town Council Meeting Minutes March 12, 2018**

The meeting was called to order at 7:00 pm.

## **Roll Call**

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

Councilors Svedlow and Hemphill were absent.

Vice-Chair Kitchel served as chair.

Councilor King moved to waive Council rules section 11 to add an item to the agenda. This item was not filed in time to meet the Thursday deadline. Councilor Jones seconded. Motion carried 5-0.

## **Order to schedule a public hearing on the FY18 Municipal and School Department Budgets for April 4, 2018.**

Councilor Farber moved the order; Councilor Ferrante seconded.

Vice-Chair Kitchel opened a public comment period; there was no public comment.

Motion carried 5-0.

## **Item 1           Application to accept Garden Way as a public street.**

Jay Reynolds, Director of Public Works, presented the item. FL Ventures, LLC has submitted an application for the acceptance of Garden Way as a public street. The applicant and staff have worked through the checklist of materials and criteria included in the ordinance. Garden Way was one of the first to be approved under the conservation subdivision ordinance, which allows smaller setbacks and encourage conservation of open space. The street received one waiver on the distance between intersections. There were no deviations from the street standards and the roadway will allow for emergency vehicle access and municipal services. It is a dead-end street with a cul-de-sac at the end. The street addresses are in conformance with E911 standards.

Councilor Farber asked about the staff memo. Mr. Reynolds said the Community Development Department reviewed the application in January and their comments have since been addressed. There were two different sets of legal comments.

Councilor King said asked about potential public access to the open space. Mr. Reynolds said the majority of the open space has been turned over to the Land Trust, and the trails connect to the Portland landfill site. There are two open spaces that are still held by the homeowners' association that would provide a connection from the trails to Garden Way.

Councilor King asked if those would remain with the homeowner's association and whether the public can use them.

Peter Biegel of Land Design Solutions, representing the applicant, discussed the open space and connectivity. There is not much opportunity for connectivity on this property because they are bordered on three sides by the homes of Charlotte Drive, wetlands, and the town line, so they focused on pedestrian connectivity instead with trails. They discussed connections with the Falmouth Conservation Trust, the owners of the dog park, and Portland Trails. They paid Portland Trails to build a boardwalk over the wetlands along the pole line, and

a stream crossing to reach the dog park. The dog park will be linked to many other trails in Portland. There is public access; the public can walk down Garden Way and access the trails, or access them from the sidewalk on Ledgewood.

Councilor Farber asked if there is room in the cul-de-sac for on-street parking. She wondered about the public parking their cars to access the trail. Mr. Biegel said there isn't a parking space, but it is a flat, grassed area. The cul-de-sac is wide enough for a parked car without blocking traffic.

Councilor Farber asked if all the residents in support of this application. Several members of the public present in the room identified themselves as residents and said they supported the application.

Councilor Farber clarified that acceptance of a street has no impact on the bus routes.

Town Manager Nathan Poore said there are several street acceptance applications in process at the moment.

Councilor King felt street connectivity is really important. The applicant has explained why it couldn't be achieved in this case. The mileage adds up on accepting all these streets. She was glad this design included a cul-de-sac instead of a hammerhead.

Councilor Jones asked where the snow goes when this street is plowed.

Amy Tarbox, resident of Garden Way, said most of the snow goes into the center of the cul-de-sac; the rest piles up on the corners on some of the properties. She said her property abuts the trail; the public access is marked by a split rail fence. People use the trail quite often; it is a wonderful feature that is used by the neighborhood.

Councilor Farber wondered what happens if the Town doesn't own the circle. Mr. Reynolds said the applicants are proposing to convey the center of the cul-de-sac to the Town along with the roadway.

Councilor Farber wondered about the cost of accepting streets. Mr. Reynolds said they had done an analysis last year; he didn't have that information with him but could bring it to the next meeting.

Councilor King said that, while this doesn't have vehicular connectivity, this is a small street, with good pedestrian connectivity, is well designed and only has one waiver. It has met all its staff reviews, and is in good shape. She was in favor of acceptance. Councilors Farber and Ferrante agreed.

## **Item 2            Public Forum on the draft contract zone agreement for Homestead Farm LLC and Turning Point Development LLC.**

Councilor Ferrante is recused from this item.

Matt Ek of Sebago Technics, representing the applicant, gave a brief synopsis of the item. The Town's current zoning would allow 153 units on the property. Their current layout includes 121 units in the residential area, with more that may be constructed in the retail/commercial area in the future.

Natalie Burns of Jensen Baird Gardner & Henry, representing the applicant, reviewed the current version of the contract and answered questions from the Council.

Councilors King and Farber asked about section 3.a.iii and the guidelines for entry level housing. Ms. Burns explained that staff requested, and they have agreed, that the number of entry level units that may be in the duplexes would not exceed 50% of the total number of entry level units in the project. She suggested modifying the language in that section to read: "Entry Level Housing on single family house lots in single family units" to make the language consistent in the section. There is a maximum of 45 entry level units across the project; a maximum of 22 of those units could be placed in duplexes.

Vice-Chair Kitchel asked for a redesign of the duplex buildings, to be more in keeping with the design of the single-family homes.

Ms. Burns said accessory dwelling units (ADU) are now prohibited throughout the development, and home occupations as listed in Section 19-54a in the current ordinance would be allowed. In response to a staff request, they will add language that clarifies the maximum number of residential units. The maximum for the whole project area shall be 151; 125 would be allowed in development area 1, 8 in development area 2, and 18 in development area 3. The Council previously asked about a park design; the developer worked with Community Programs on a draft design in the past. Mr. Ek said there would be playground equipment but that would be designed in conjunction with PACPAC. There would be an ADA trail, with benches and access to abutting sidewalks. The Council asked for the concept design to be incorporated into the agreement as an exhibit. Ms. Burns said the other two open spaces would be maintained by the homeowners' association, and the Town will have easements for access.

Councilor Farber asked if the sidewalks are included in the street system; Ms. Burns said that they are. Once the streets have been built to the base course of pavement, the Town will be granted an easement across them. The Town will also be granted the easements across the trails prior to the issuance of the first certificate of occupancy for each phase. The impact fees are per residential unit and will be paid prior to issuance of the building permit.

Councilor Farber asked if "residential unit" and "dwelling unit" are interchangeable; Ms. Burns said they are. The Council asked them to use one term throughout the document.

Vice-Chair Kitchel asked if the granting of the easements across the roads at the base course of the pavement is a standard condition; Mr. Poore said no, this is part of the public benefit. The public will have the right to use the streets, but the Town will not have the obligation to maintain the roads until such time as they are accepted as public streets.

Ms. Burns asked whether the Council wanted the building designs to be included in the exhibits of the agreements. There are already restrictions in the document as to how many matching designs can be placed in a row to avoid a "cookie cutter" neighborhood. Mr. Poore said staff has suggested granting final authority for building design approval to the Planning Board, which has experience with design guidelines and can evaluate the proposed design according to Great American Neighborhood design. The Board could also request architectural design peer review. Staff and the developer will discuss this suggestion and bring it back to the Council.

Councilor Farber asked about the exemption from the growth permit; the request is for up to 45 dwelling units under the entry-level housing. Ms. Burns said it is a minimum of 32, and a maximum of 45. Councilor Farber said the exemption for 55+ is a maximum of 25% per phase. She asked for clarification on what the final maximums are. Ms. Burns said the 25% was on the total 125 dwelling units in development area 1, the residential area. Councilor Farber thought the number should be 25% of each phase, minus the exemptions for entry-level housing. She also thought there was a target number for each phase. Ms. Burns said there is a limitation on entry-level housing for each phase under section 3.a.iii. Mr. Poore said if they built the full number of entry level dwellings (45) and take those out of the 125, it is 80. 25% of 80 would be 20. 25% of 125 is 30. It is a 10 lot difference.

David Chase, developer, said his intent was to ask for 32 exemptions for entry-level housing units, not 45. Subtracting 32 from 125 is 93 units; 25% of that is 23 units. That only applies to single-family units. Ms. Burns said they will work on that language to make it clearer.

Mr. Poore presented the staff comments that outlined remaining policy questions including what impact the school enrollment study has, traffic impacts, roundabout design, park design, architecture design, total number of units, home occupations as a permitted use, wetland setbacks, and ensuring street connectivity through phase 3.

Ms. Burns said the developer has withdrawn his request for the reduction in wetland setbacks.

Mr. Ek discussed changes to the phasing plan, which would move the completion of the through street to Phase 2 instead of Phase 3. Councilor King appreciated the effort to ensure connectivity early in the project.

Mr. Ek said this is in response to staff concerns about connectivity waiting until Phase 3. This plan also works with the sewer design. It will build more road in Phase 1, but the developer has agreed to do that.

Mr. Poore said this is an improvement but isn't a guarantee. This plan will incentivize the developer to fully develop phase 3. A full guarantee of the build out would require a full performance guarantee with timelines and restrictions, which would require negotiations with the developer.

Mr. Chase said he was happy to work with the Town to get a letter of credit for assurance for the whole road. This would also slow down the development and make it easier for the Town to absorb the new housing. He didn't want to have to pay property taxes on buildable lots before he had to.

Vice-Chair Kitchel opened the public forum.

Kayla Bailey, a Falmouth resident and a teacher in the school department, said she has seen some offensive comments about the proposed entry level housing and what type of people would move in to them. She teaches in the school but can't afford to live here without help from her family. A lot of the townspeople that work in the town, including police and municipal staff, can't afford the price of the housing currently available. A \$300,000 house is not affordable for most of those people. She said students from other districts attend school in town; it would be great for them to be able to be part of the community. There aren't many development sites in town that allow for the type of community feel that this development will. This is lacking in Falmouth.

Donna Little, resident of West Falmouth, was overwhelmed with so many buildings. This is a cluster. There is no space here. There would be a lot of traffic. She asked why they needed so many houses here. She said Falmouth has a sense of beauty. She was concerned about the environment of West Falmouth. This is too much, too fast.

Morgan Camplin of Stoneridge, does mortgages for a living and sees the need for affordable housing. There is one house under \$425,000 on the market in Falmouth right now. She thought they need to figure out a way to provide affordable housing. There aren't many people that can afford to buy here. She spoke in favor of the developer; he can build the number of houses in the time he says. Bringing the utilities down Route 100 will bring more businesses in the area. No one wanted the shopping plaza in West Falmouth at first and now everyone likes having it there. 5 years from now this development will make it a better community.

Ed Libby of Yarmouth invested in the West Falmouth development. More residential development in the area will be good for the businesses in the shopping plaza. They all look forward to having more customers in walking distance of the plaza. He said Portland has global name recognition and is attracting a lot of business, but the question is where these new people are going to live. Falmouth is doing a good job of managing growth, and being thoughtful about where that growth should be. This development fits where the Town wanted growth: on Route 100 where all this infrastructure is going to go. Affordability and walkability come with density. This project is taking a good step in that direction and fits the comprehensive plan. This is a big change and it is hard for people to get used to.

Matt Lamontagne grew up in Falmouth and said when he graduated from college and wanted to move back to Falmouth, he couldn't afford to, and many of his friends couldn't either. He spoke in favor of the developer, the plan, and felt it would be a good community.

Amy Robidas of Falmouth Road reviewed the school enrollment study. She felt that this development will significantly increase the number of students in Falmouth's already overcrowded schools. She thought the study was conservative; a prior study projected 1800 students, and there are now 2100 students. In fall 2019, the elementary school will exceed capacity and the middle school will be at capacity. The elementary school is not even 10 years old. It will be hard to maintain the schools' high standards with that level of crowding. She felt that would affect property values. According to the contract zone language the Council has to find that

the development will have more public benefit than it would without the contract zone; she didn't see the public benefit here. The only one she saw was the public park, which the Town will have to maintain. She said any developer can build affordable housing under the current zoning and not need a contract zone.

Elwin Hanson of Woodville Road asked how many units could be built in that area without the contract zone. Vice-Chair Kitchel said current zoning would allow up to 153 if the topography allowed it. Mr. Hanson asked why the contract zone provided any more benefit. As a farmer he is concerned with land use. He didn't think it was a wise use of land to put that many houses in this area. It would overuse the land and would impact the schools, the sewer, and the water. He fought cluster zoning 20 years ago; it isn't the way to use the land. There are 4 main waterways coming out of that development and the runoff is going to end up in the ocean. He opposed the development. He argued that people won't want to come to Falmouth if it is like this.

David Murdoch of Brook Road opposed the zoning change. It will change the dynamic character of the town. He has heard overwhelming opposition to this development and little support for it. He argued that there are a lot of homes already being built in Falmouth. He urged the Council to oppose the development. He said the Council should work with the Habitat for Humanity project to develop the affordable housing everyone wants.

John Winslow of Gray Road said the three people that spoke in favor were a mortgage broker, a realtor and a business owner that doesn't live in town. He wondered why the Council is supporting a development that the public opposes. A contract zone development should provide public benefit that wouldn't otherwise be there. He didn't see the public benefit of this development. He spoke about the allowed uses under VMU zoning. There are several public parks in the area already. The increase in impervious surface would increase pollution, and the increase in traffic would overburden Gray Road. It will impact the school system, which is already at capacity. He didn't agree that 55+ housing would not impact the school department. There are 48 residential units under construction currently. This development would negatively impact the character of West Falmouth.

Steve Dyer of Mountain Road, an abutter, said he has struggled with a lack of notification from the Town about the project. He opposed the development because of the size and the impact to the schools. The schools will meet capacity in a year, and yet they are considering exemptions to the growth permits. He wondered why they would add more demand to the schools. He argued that there are affordable houses in Falmouth, though there may not be any available now. He said this area was identified in the comp plan for mixed use, with commercial as well as residential. This development is over 95% residential; it is barely mixed use. This is an overwhelming project. He was concerned about noise impacts from the highway when the vegetation is taken down. He felt there would be an uprising if this is granted.

Nancy Evans of Brook Road opposed the development. Many of the people who speak in favor of the project don't live in the area where it will be built. She felt they would feel differently if they did. She didn't think this was a good use of the land; it is too many houses in a small space.

Linda Dyer of Mountain Road moved to Falmouth 25 years ago. She didn't think the community owes people a house just to get into the school. She said their home value will go down due to the development. She argued that there is a good sense of community in Falmouth already. This development is too large. She was concerned with the traffic and impact on the schools. She wondered how this development got this big and why the Town spent tax money on this proposal.

Keith Noyes of Gray Road thought the Town wanted to bring urban sprawl into a contract zone. He didn't support the proposal. He has been on the property and said there are four streams on the property not three. He asked how they would cross the ravines. He asked what the homes would look like. He thought the impact on the schools alone should be enough to stop this development right now. He said it would be a disaster to build this at the same time as the infrastructure project on Route 100. He argued that the road would be right next to Julie Porter's property line. He felt the trail from this development to Marston Street would be a bad idea; there is not a guardrail on the highway there. It is too much, too fast.

Julie Porter of Mountain Road said she is part of a committee that is looking to recognize the Piscataqua Corner Village as a historic district. They are working with the National Park Service and have filed an application to recognize the historic nature of the neighborhood. They want to maintain the atmosphere of this area.

Alex Stevens of Lakeside Drive moved his business to Leighton Road 16 years ago. There are now seven businesses within 150 yards of his building. There are several more businesses down Route 100. There was no opposition to the development of those businesses. He thought this development will benefit the businesses in town and the schools. As a business owner and West Falmouth land owner he supported the development.

Michael Doyle of Shady Lane spoke about unintended consequences. He thought the Town has the largest elementary school in the state. He asked if the plan would be for the schools to have trailers again. He said adding 1000 kids to the school system would happen in 4-5 years, and would make the average tax bill over \$12,000. He wondered how that would make housing affordable. It costs \$15,000/year for a student to attend school in Falmouth. He felt this was an unsustainable direction. Once the houses are built and the kids are in school, you can't go back.

Chantal Scott of Rockaway Road asked about the average cost of the houses in the development and what the starting prices would be. She thought there was a minimum of 2 acre lots in town which helped keep growth low. She spoke about the crowding in the schools. She felt this was a drastic difference to what the traditional housing in Falmouth has been. She read some listings of homes available in Falmouth that were all under \$400,000. She said a home of \$400,000 on a sixth of an acre lot isn't affordable. She felt there would be a lot of noise complaints with this many homes along the highway; they would have to put up barriers.

Todd Kelley said the area behind Harmons was all ravine and it was filled about 15 years ago. He said they are proposing to put commercial buildings on that fill. He pointed out that people will cut through this neighborhood to get from Gray Road to Mountain Road.

Public forum closed.

Councilor Farber didn't want to go to public hearing with the documents still in flux. She wanted the Council to have a final document and be able to discuss it with each other before a hearing. She wanted to have a workshop after staff and the developer have finalized the document.

The Council discussed how to move forward. The Council will hold a workshop on this item on March 26 and the formal public hearing was scheduled for April 9. The Planning Board will hold their MRA hearing on April 3.

**Item 3                    Introduction of an amendment to the Code of Ordinances Div. II-2-3-12.  
Economic Improvement Committee to update the charge of the Falmouth  
Economic Improvement Committee (FEIC).**

Councilor Ferrante introduced the amendment. She said the committee is hosting another business forum on March 26 at 8am at Mason-Motz; this forum will be focused more on dialogue and discussion and follows the keynote speaker from the first forum. They have made some progress on their workplan this year and will report to the Council soon.

Councilor King suggested a small change to the language; Councilor Ferrante agreed with the change.

A public hearing was scheduled for April 9.

**Item 4 Introduction of an amendment to Section 19-124 of the Code of Ordinances relative to expanding abutter notification requirements for certain applications to the Board of Zoning Appeals**

Councilor King explained that the Ordinance Committee has reviewed a possible expansion of abutter notices for certain applications to the Zoning Board relative to the Waterview Overlay District. The houses in that area are close together and many have views of the ocean. Currently only abutting properties receive notices but according to public feedback, development in this area can affect more than just the abutting properties. The committee has reviewed it, and propose an expansion of the abutter notification to 250 feet from the project for changes to the physical property. Changes to use only would not trigger expanded abutter notifications.

Mr. Poore said the committee took an inventory of all abutter notification requirements town-wide. The committee and staff agreed that the current process works well except for this situation.

Councilor Farber asked for input from the Board of Zoning Appeals (BZA) on this proposal. CDC has been looking at this district and the language referencing the impact on water views. She wondered if expanding the notification area would impact the interpretation of the language.

The Council asked the BZA to discuss this at their next meeting and send comments back to the Council.

A public hearing was scheduled for April 9.

**Item 5 Ordinance to amend Sections 19-8, 19-9, and 19-10.1 of the Zoning and Site Plan Review Ordinance relative to amending maximum residential density allowances for two- and multi-family development in the RA, RB, and RD Districts.**

Councilor Farber pointed out that projects that go to the Planning Board are the only ones that use maximum residential density. This amendment would not impact two-family projects on single lots. Any development that would create three units would trigger Planning Board review.

Councilor Ferrante was concerned that there are small projects that have to go to the Planning Board. There are projects that are in the works already that may be affected by this.

Ethan Croce, Community Development Director, agreed that some small projects have to go to Planning Board. This ordinance changes the number of units that can be put onto a piece of land.

Councilor Farber said any small projects that need Planning Board approval are already under the moratorium.

Councilor Farber moved the ordinance; Councilor King seconded. Motion carried 5-0.

Mr. Croce pointed out that the effect of this action repeals the moratorium as of this date. It would have expired as of March 31.

**Item 6 Ordinance to amend Section 19-18 of the Zoning and Site Plan Review Ordinance relative to expanding the applicability of the Resource Conservation Zoning Overlay District (RCZO) to two-family and multi-family development.**

Councilor Farber outlined the proposed changes. Vice-Chair Kitchel reported that the Planning Board recommended approval of the amendment as presented.

Councilor Farber moved the ordinance; Councilor King seconded. Motion carried 5-0.

**Item 7            Ordinance to amend Section 19-11.5.9.5 of the Zoning and Site Plan Review Ordinance relative to wall sign lettering size in the VC Districts.**

Vice-Chair Kitchel said the Planning Board recommended approval of the amendment as drafted.

Councilor Farber outlined the proposed changes. This amendment would grant the Planning Board the flexibility to review the size of wall sign lettering in relation to the building's distance to the street.

Councilor Ferrante moved the ordinance; Councilor Jones seconded. Motion carried 5-0.

**Item 8            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 Farber moved the order; Councilor King seconded. Motion carried 5-0.

The Council entered executive session at 10:54 pm and did not return.

Respectfully submitted,

Melissa Tryon  
Recording Secretary