

Town Council Meeting Minutes March 26, 2018

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

Roll Call

Councilors Svedlow, King, Farber, Hemphill, Jones and Ferrante were present and answering roll call.
Councilor Kitchel was absent.

Pledge of Allegiance

Chair Hemphill led those present in the Pledge of Allegiance.

Item 1 Public Forum

Maura McDermott of Mast Road distributed materials to the Council about the need for housing for those with intellectual disabilities, and advocated for the proposed Habitat project to set aside 20% of the house lots for those with intellectual disabilities including autism, 20% for the elderly population, 20% for the low-income population, 20% to be market rate housing, and the remaining 20% for whatever needs are present. There is a huge waiting list for people with intellectual disabilities to get housing with DHS. She suggested different home models that would serve both the disabled and the elderly. This would be geared for the intellectually disabled population that can live independently, and could hold a job in the Route 1 corridor. Before the Town makes a contract, she asked if they could form a committee. There is a critical need, and this population fits the mission of Habitat.

Item 2 Consent Agenda

- **Order to approve the minutes of the February 12, 2018, Town Council Special Meeting.**
- **Order to approve the minutes of the February 26, 2018, Town Council Meeting.**

Councilor Svedlow moved the agenda; Councilor Farber seconded. Motion carried 6-0.

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

Councilor King said the Tercentennial Committee is hosting an event tomorrow night at the library. A professor from Bates will speak about the Wabanaki and their history.

Councilor Ferrante said the FEIC hosted a business forum this morning at Lunt. It was well attended.

Item 4 Report from the Appointments Committee regarding various vacancies on Boards and Committees.

There was no report. The committees are full.

Item 5 Order to nominate a representative to the new GPCOG Regional Voice Committee.

Town Manager Nathan Poore said GPCOG was looking for an elected official. Councilor Kitchel has offered to serve in this role.

Councilor Farber moved the order; Councilor Ferrante seconded.

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

Motion carried 6-0.

Item 6 Reschedule the Public Hearing on 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 to Monday, April 23, 2018.

Mr. Poore explained that this public hearing was originally scheduled for April 9, the same night as the public hearing for Homestead. Staff are concerned that, with the amount of public interest in both these items, there might be a capacity issue at Town Hall if they were held on the same night. Staff are recommending that the Council move this hearing to April 23.

The Council rescheduled the public hearing to Monday, April 23.

Item 7 Introduction of an amendment to Section 8-16 of the Code of Ordinances to extend the moratorium on retail marijuana establishments and retail marijuana social clubs for 180 days.

Councilor Jones explained that the committee is waiting for the Legislature to develop state-wide rules on this issue and so they are recommending that the moratorium be extended. They will reconvene as a committee once the state issues those rules.

Councilor Svedlow asked if there was a timeline on the state issuing those rules. Councilor Jones said there was not.

The public hearing was scheduled for Monday, April 23.

Item 8 Discussion regarding possible amendments to Section 19-18 of the Code of Ordinances relative to the amount of open space required for conservation subdivisions.

Councilor Farber said LPAC had made several recommendations relative to RCZO. This amendment would return the required open space set aside to 50% in the rural areas of town. At the time of the introduction, the Council was concerned that the committee's work on the update of *The Greening of Falmouth* would impact this change. LPAC has met and a memo from them is attached to the agenda.

Councilor Ferrante said there is support in the community for leaving it at its current 30%.

Councilor King said there will be further discussions at LPAC about open space in the growth areas.

The public hearing was scheduled for Monday, April 23.

Item 9 Discussion on a draft temporary sign ordinance.

Councilor Farber explained the history of this item. Changes were made to the ordinances regarding permanent signs to bring them into compliance with the Supreme Court's ruling in Reed v. Gilbert. This ordinance will do the same for temporary signs. In general, the draft language mirrors what the state allows. This would impact signs such as: "for sale" signs, political signs, open/closed signs, and signs advertising special events. The CDC wanted people to be aware of this as soon as possible. Recently they discussed limitations on signs in the right of way – they are suggesting a prohibition on signs in medians and esplanades. They are still debating how long a temporary sign should be allowed to remain up. The difficulty is how to regulate all the signs the same, when real estate signs might be up for longer than others. The current draft states a limit of 42 days. The CDC is asking for input from the Council and the public on the draft language and the time limit.

Amanda Stearns, Land Use Policy Specialist, said they also have to be mindful of the Maine Travelers Regulations Act. The state regulates signs in the right of way, and they have a 42-day limit on temporary signs. Towns can pass their own regulations for signs in the right of way but those cannot be less stringent than the state's. She said they could have a different regulation on signs on private property, but the committee was concerned about enforcing that. She said a circuit court in DC has suggested that they could differentiate between signs that are for an event. It could perhaps be argued that a real estate sign is an event sign; it expires when the home is sold.

Councilor King asked if a real estate sign could be considered as a permanent sign. It is attached to a post in the ground. Ms. Stearns said they can't regulate content on signs, and any property owner has a right to erect a sign on their private property at any time. They could put a provision in the permanent sign ordinance for post type real estate signs on private property. Post signs in the right of way would be more difficult. Permanent signs cannot be erected in the right of way under state statute. Digging a hole for a sign isn't allowed for a temporary sign.

Councilor Svedlow asked if it was 42 days in one stretch. Ms. Stearns said it is 42 days in one calendar year. That limit comes from the old political sign limitation.

Councilor Svedlow asked if they have to put a number in there for a sign on private property. Ms. Stearns said they do. A temporary sign, by definition, needs a time limit.

Councilor Svedlow was interested in something simple and general for a timeframe.

Chair Hemphill wondered about marking the sign in some way to help track how long a sign has been out. Ms. Stearns said staff has had some general discussion on how it would be tracked and enforced.

Mr. Poore said the Town can no longer base code enforcement on complaints only, because that could be inferred to be enforcement based on content. They have to have some enforcement system in place.

The CDC will meet again to discuss the feedback and bring it back to the Council in the future.

Item 10 Workshop on the draft contract zone agreement for Homestead Farm LLC and Turning Point Development LLC.

Councilor Ferrante was recused from this item.

Ms. Stearns said the most recent version of the agreement, dated March 19, is a result of the Council's meeting on the item on March 12 as well as a meeting held with the development team and staff on March 15. She said the current version requires that at least 32 of the entry-level housing units be provided with single-family dwellings.

Councilor Farber asked about the limits on entry-level housing. Ms. Stearns said it is outlined in the phasing – it is a minimum of 6 and a maximum of 15 per phase, and a minimum of 32 over the whole project.

Councilor King said the maximum number of entry-level housing is 45; 32 must be single-family dwellings. Ms. Stearns said that is correct; there could have 13 extra units in the two-family dwellings which would be 6 duplexes.

Ms. Stearns said the contract has been amended to allow home occupations that do not require BZA approval and now includes a total number of 151 units in the project; 125 in development area 1, 8 in development area 2, and 18 in development area 3.

Councilor Farber asked if this creates an entitlement to 151 units; Ms. Stearns said yes, it creates a maximum.

Councilor Farber asked what happens if something changes as part of the Planning Board approval and the lots have to move. Ms. Stearns said there could be conditional language that makes it clear that the Planning Board could reduce the numbers during their review process to meet subdivision regulations.

Councilor King said there is no maximum number of entry-level housing. She was concerned about the number of growth cap exemptions. Ms. Stearns said the developer has offered to impose a limit on the exemptions under the rate of growth section to no more than 15 entry level housing units per phase which would still allow the maximum 45 units to be exempt. Section 3.a.iii limits them to 45 entry level lots in the project. Councilor King was concerned that the language is inconsistent between units and lots; a single lot could have a duplex placed on it.

Councilor Farber said she didn't care how many entry-level housing units are included in the project as long as the minimum is 32. Creating diversity in housing stock is one of the benefits of the project. She didn't think they should all be entitled to growth cap exemptions. She didn't care if they were single or duplex units, as long as there was a minimum of 32. She wasn't sure about the exemption limit as currently drafted.

Mr. Poore had some concern about there being only one duplex design; there would be more diversity with the single-family dwellings. The staff is recommending a minimum number of single-family dwellings to limit the number of duplexes.

Ms. Stearns said there is a minimum of 6 duplex buildings. There is a limit of 22 duplex units, so 11 duplex buildings. That is in section 3.a.ii.

Councilor King asked about the growth permit exemptions for 55+ housing. Ms. Stearns said those are limited to 23; this brings the total number of allowed exemptions to 55. That would be slightly less than half of the 125 in the residential area. The growth cap is 65 town wide per year.

Councilor King was concerned about the rate of growth and that there were little restrictions on those units once they were sold. She wanted to remove them entirely.

Ms. Stearns said the concept design on the public park has now been included as an exhibit per the Council's request. Staff have requested clarity in the agreement as to which park is referred to on the plans.

Ms. Stearns said Councilor Farber had asked for the language to specifically state that sidewalks would have a public use easement. That language has been added.

Mr. Poore said staff made a recommendation early in the process that the project follow Great American Neighborhood design guidelines. The developer has now submitted additional home designs. The recommendation is for the Planning Board to work with an architecture peer reviewer to review design guidelines for the development. He asked the Council if architectural design is important to them and whether they wanted to review it at this level or to allow it to be a Planning Board function.

Councilor Farber asked how this element would be handled if this project went to the Board directly. Mr. Poore said the Board has not had guidelines for subdivisions. Ms. Stearns said they haven't had guidelines, but design review has been a part of previous subdivisions.

Councilor Farber didn't think this was the role of the Council. She supported the staff recommendation.

Councilor King wondered if language could be added to the agreement about the Great American Neighborhood and that review would be at the Planning Board level. Ms. Stearns said they could do that.

Mr. Poore thought the designs offered at this point will work; it is how they are laid out through the project and how they are sited on the lots. He thought this would be better reviewed at the Planning Board with architecture peer review. The Council agreed.

Ms. Stearns said the current plan includes the design of the left-hand turn lane. The agreement states that any off-site improvements will be paid by the developer.

Mr. Poore said the Town asked the engineer to add a left turn lane into the plans for Route 100 in the event this project is built. The turn will only be built if this project is built but language in the agreement should be specific.

Councilor Farber asked how the building permits will work with this project. Ms. Stearns said they have to have a building permit application that includes the building plans. The system is first come, first serve. If they came in with 20 applications for building permits, when the building permits were ready for approval, the growth permits would be issued along with them. There are time limits: the work must start within six months of permit issuance, and be completed within a year.

Councilor Farber asked if the exemptions would take effect after the annual 65 permits had been issued. Ms. Stearns said no, they would be issued when the application is submitted. Staff will have to develop some way to ensure the permits are eligible for the exemption.

Councilor Farber thought the exemptions would only be utilized after all the other permits for the year had been issued; Ms. Stearns said that was discussed early on, but that language is no longer in the agreement.

Councilor Farber said the only way she can see the growth cap being respected is if they take permits until they reach the limit and then used the exemptions. If not, they could theoretically build 65 homes plus the exemptions in one year.

Councilor Svedlow was concerned about the property owner that came in the spring to get a permit to find that this development had used all of them already, without having used any of their exemptions.

Councilor King was concerned because they had created classes of exemptions for entry-level and 55+ housing. She wondered whether they sell the lots first, or build the homes and then sell them.

Ms. Stearns said that all the homes in a 55+ housing project would be exempt if they met the qualifications under the Fair Housing Act.

Councilor Farber asked if there were a maximum number of building units per phase. Ms. Stearns said there are limits on entry level housing per phase and again under the rate of growth section. There is a max of 23 exemptions on 55+ housing throughout the project but that is not limited by phase.

Councilor Farber wondered about placing a limit on the number of structures built per year. She didn't think offering exemptions for 55+ provided a benefit to the Town in terms of diversity of housing; the type of housing that would appeal to that group would also appeal to families with small children and this development doesn't provide any specific services or benefits for the 55+ population. There is no way to make certain that the 55+ home wasn't sold to someone that doesn't fit that qualification soon after it is built. She thought providing entry-level housing did provide a benefit.

Chair Hemphill said the entry level housing is price point based and that price point must be maintained for 3 years. There wasn't a way to certify that 55+ housing would continue to serve that group after the first sale.

Councilor Svedlow asked why Oceanview doesn't have to pull growth permits. Ms. Stearns said all lots under a Retirement Community Overlay are exempt under the ordinance. Oceanview and the Avesta development are both under that overlay. She assumed that the Council at the time determined that these developments don't use the same level as service as other types of housing development.

Chair Hemphill said those developments require that the head of household is 55+; Ms. Stearns said that is correct. They are permanently 55+ housing and cannot convert. Chair Hemphill said that is a significant difference.

Councilor King asked what these exemptions are doing. It is allowing buildings to be built beyond the cap when the owner is older than 55.

Councilor Svedlow thought this was the Council's idea, to incentivize 55+ housing and encourage diversity in the project. He was fine with scrapping it. He thought incentivizing entry-level housing is more important but pointed out that that might increase the number of kids in the schools.

Chair Hemphill thought exempting 55+ would reduce the impact on services, and would allow the developer to get the project built out sooner and not drag it out over several years.

Councilor King thought it was easy to turn these units over and that children or grandchildren could live in them.

Councilor Farber said it tempers the immediate short-term impact on the schools. She was concerned that the 55+ wasn't forever; it's just the initial buyer.

Ms. Stearns said the agreement has a maximum on the total number of exemptions for 55+ for the whole project, but not per phase like the entry-level housing. She asked if adding a limit per phase, or per year, would help. She said that would be easier for staff to administer.

Councilor King felt that having a third of the permits exempt undermines the growth cap.

Councilor Farber said there were 55 total exemptions allowed of the 125 units in development area. Ms. Stearns said it is out of the total 151. Councilor Farber argued that the 26 units in the other development areas are different. The 55 exemptions represent 45% of the 125 units; that's a lot.

Councilor Svedlow suggested capping each phase by percentage, including both entry level and 55+. Ms. Stearns said they could determine how many more than 65 would be allowable. Growth has been under the cap of 65 on average. They have only met the cap once in the last 10 years.

Councilor Farber was trying to find a place where they keep this to reasonable limits. She wondered if they need to shrink the total project down from 125.

Chair Hemphill said there is a critical number of units that the developer needs to make this work. He thought they need to be respectful of the developer with regards to that.

Councilor Farber wondered about putting a maximum number of units on each phase. She wanted them to stay as close to the existing growth cap as possible. Councilor Svedlow agreed that slowing this down some might make it more palatable.

Ms. Stearns said the concept plan includes 47 lots in phase 1; up to 12 of those lots could be two-family, bringing it to 59 units in phase 1. 15 of those could have entry-level exemptions, which would leave 44 needing to pull permits. That would not prohibit other people from pulling permits. Since this is a concept, the phasing plan could change at the Planning Board level, unless the Council adds a maximum number of units per phase.

Councilor King thought the developer had mentioned something about 25-35 units per year at one point.

Mr. Poore asked the developer how many units per year he expects to build.

Dave Chase, developer, said 40 would be ideal; he could live with 35. The entry-level housing isn't a windfall for him. It was part of the negotiation with the CDC. If they take away the exemptions, he would like to lower the number of entry-level. He said they are not going to hit the 153 allowed in the area; they will likely only hit 141.

Ms. Stearns asked if they wanted to add a maximum number of units per phase. The agreement requires a minimum one-year gap between the first building permit issued for phase 1 and the start of phase 2.

Councilor Farber suggested they determine a maximum number of units per phase, maintain the 15 exemptions per phase for entry level, and determine a maximum number of exemptions per phase for 55+.

Ms. Stearns pointed out that growth permits are tracked per year.

The Council discussed how to address the rate of growth. Mr. Poore said the town has been averaging 42 permits built per year. That would leave 23 permits available before they reached the limit of 65. If the development is limited to 35 units per year and they back out the 15 exemptions for entry level and 7 for 55+, that would mean that they would need 12 permits. The school enrollment study suggested that building in this area would reduce demand in other areas. This would mean that the exemptions wouldn't benefit this project so much as other development in town.

Ms. Stearns said the developer has changed the phasing plan to move phase 2 adjacent to phase 1; this means the through street will be completed with phase 2.

Mr. Poore asked about the length limit on dead end streets. Ms. Stearns said it is 1500 linear feet. Mr. Poore asked if the end of the street in phase 1 is 1500 feet from the roundabout. The developer said it is close to that, and they could shorten it to meet that standard.

Mr. Poore said they should have a performance guarantee to ensure that road is built. Councilor King thought the developer had agreed to post a guarantee. Mr. Chase confirmed that commitment.

Councilor Farber asked how close the entrance from Mountain Road is to the Porter house.

Matt Ek of Sebago Technics said the right of way abuts the property line, but he wasn't sure how close the roadway would be.

Councilor Farber asked if the Planning Board would look at that. Ms. Stearns said there are no setbacks to the right of way.

Councilor Svedlow estimated that the home is 15 feet from the right of way. Ms. Stearns said the street would be located somewhere in the right of way, typically in the middle. The Planning Board could mandate that the road be shifted away from the home, or that landscaping be installed to buffer it, but there is no specific requirement for that.

Councilor Svedlow asked that a cul-de-sac be installed at the end of that road if only phase 1 is built, instead of a hammerhead. Mr. Poore said there is a stream there that might make it difficult.

Councilor King thought there would be a performance guarantee to ensure the completion of the road. She asked if that should be included in the agreement. Ms. Stearns said that would not be typical for the Planning Board; they would only require a guarantee for each phase. Councilor Svedlow argued that if phase 2 was never built, there was no need to build that road, which would cross two streams and a wetland. Councilor King said it would ensure connectivity and prevents future development from creating several separate cul-de-sacs.

Ms. Stearns thought the developer has stated that his plan is to go to the Planning Board for the entire project. In that case, when the whole subdivision is approved and recorded, no modifications can be made to the plan without the project returning to the Planning Board. She pointed out that if the owner changes, the agreement cannot be turned over without the Council's approval. The contract is between the developers and the Council; it does not transfer with the land. She suggested that the Council could add language that phase 2 cannot be amended in such a way as to remove the street connectivity.

Councilor Svedlow left the meeting.

Ms. Stearns said the developer has removed the request for amendments to the wetland setbacks. She asked the Council if they wanted to require the roundabout. The Council asked for it to be a requirement.

Ms. Stearns asked if the school enrollment study would impact the project moving forward in any way. Councilor Farber said the Town is going to educate the children in the town, whether this development moves forward or not. This development may slow demand for growth in other areas of town. There is no way to make a true prediction. Shrinking is a far bigger problem. Remaining steady or growing at a measured pace can be planned for. Chair Hemphill said the comp plan says the town will continue to grow, and this is a part of growth. The School Department has said they can handle it, and it isn't a panic. Councilor King said the department spoke about being flexible and making changes but they feel confident in their capability to accommodate changes. They are already thinking about how to incorporate growth.

Ms. Stearns said the traffic peer reviewer looked at the Stantec review and the original traffic study. Traffic impacts are part of the regular Planning Board approval process. A left turn lane is planned already for the intersection at Harmons and one may be required at the southern entrance. She asked if the Council wanted to review it or let the Board review it as part of their review process.

Councilor Farber felt the Board was the proper body to review it. The Council agreed.

The Council discussed the growth permits, the exemptions, the number of units built per year and how to address them. They discussed limiting the number of units per year, allowing a certain number of those to be exempt, separating the exemptions from the uses, and maintaining the minimum number of entry level housing per phase. There is already a cap of the total number of exemptions per phase.

The Council suggested a limit of 40 total number of units built per year; a maximum of 15 of those could be exempt. The exemptions could be any mixture of 55+ or entry level housing, provided that the developer would still need to meet the minimum number of entry-level units as outlined in the agreement and would be limited by the number of allowed exemptions per phase.

Chair Hemphill asked about natural gas. Mr. Chase said they wanted natural gas and it would be a benefit to the neighborhood. He said he could include Town staff in his conversations with Summit.

Councilor Farber asked if the initial plantings in the development could be native species. Ms. Stearns said there is a blanket prohibition against invasive species.

Councilor Farber asked if crosswalks would be part of the sidewalk system. Mr. Ek said crosswalks at the intersections would be part of the system. Councilor Farber pointed out that the sidewalk is only on one side of the street. She wondered about ensuring that the sidewalks are connected with crosswalks. Mr. Poore said staff would ensure that at the Planning Board review.

Councilor Farber asked about long-term trail maintenance. Ms. Stearns said they could require a stewardship fee, though that wouldn't ensure that the maintenance gets done. It is easy to guarantee that the trail gets built. Mr. Poore said the Town will get an easement which grants the Town the right, but not the obligation, to maintain the trail. Mr. Ek said there would be a homeowners' association; it is mandated in the contract.

The Planning Board will hold their hearing on Tuesday, April 3. The Council will hold their public hearing on Monday, April 9.

Adjourn

Councilor Farber moved to adjourn; Councilor King seconded. Motion carried 5-0.

Meeting adjourned at 10:22 pm.

Respectfully submitted

Melissa Tryon
Recording Secretary