

Town Council Meeting Minutes November 26, 2018

The meeting was called to order at 7:03 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

No one spoke at public forum.

Item 2 Consent Agenda

- **Order to approve the minutes of the October 10, 2018, Town Council Special Meeting**
- **Order to approve the minutes of the October 22, 2018, Town Council Meeting**
- **Order to certify the November 6, 2018 Election results.**

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

Councilor King moved the agenda; Councilor Cahan seconded. Motion carried 7-0.

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

Councilor Svedlow said the new floats are now stacked nicely at Town Landing.

Chair Hemphill reported that the ecomaine eco-excellence award nomination process has begun. Nominations are being accepted until January 31.

Councilor Cahan said a member has resigned from REAC. She encouraged members of the public to apply for that committee.

Councilor Kuhn said the community tree lighting is this Thursday at 5:30, including Santa and cookies. The Ugly Sweater 5K will benefit the Falmouth Memorial Library this year. The race is on Saturday at 9am.

Melissa Tryon, Executive Assistant, gave a report on the schedule of events at Very Merry Falmouth, November 29-December 1.

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

There was no report.

Item 5 Order to authorize the Town Manager to execute a quit claim deed for Map U31, Lot 18, upon receipt of full payment of all taxes and fees.

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

Councilor Svedlow moved the order; Councilor Asherman seconded. Motion carried 7-0.

Item 6 Public Hearing and Order to approve a Food Service License for Poppies Kettle Corn.

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

Councilor Svedlow moved the order; Councilor Cahan seconded. Motion carried 7-0.

Item 7 Resolution to accept the Recycling and Energy Advisory Committee's 2018 Municipal and School Energy and Sustainability Plan

Councilor King asked for the plan to be brought to the School Board for their review and approval as well.

Councilor Cahan agreed; it would be good to have a plan from the School department as well.

Kimberly Darling, Sustainability Coordinator, said this plan reflects both the municipal and school energy data. There is collaboration between municipal and school staff members. The school is doing wonderful things already; the goal of this plan is to bring it all together. She agreed that the school should have their own climate action plan that speaks to all their departments.

Councilor Svedlow thought it was a good idea to take this plan and present it to the School Board.

Councilor Cahan thought the Council was ready to hear more ideas about actions they can take to support the goals of the resolution.

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

Councilor Svedlow moved the resolution; Councilor Kuhn seconded. Motion carried 7-0.

Item 8 (CANCELLED) Resolution to support the designation of a section of the Presumpscot River as the Mallison/Saccarappa Scenic and Natural River Corridor.

This item was postponed; it will be rescheduled for a meeting in January.

Item 9 Discussion about required documents that will need future action by the Town Council, which are associated with the transfer of certain land referred to as TF1, TF2, TF3 within the Tidewater Master Planned Development District to the Falmouth Land Trust.

Mr. Poore explained that the property identified as TF1 is designated as conservation land; TF2 and TF3 were lots that were originally planned for development. Another section of the property, known as TF5, is adjacent to the Wastewater plan. The Falmouth Land Trust has identified TF2 and TF3 as a potential location for a future headquarters. The agreement between the Town and the Trust is to purchase the land from the current property owner. This agreement is based on the appraisal of the property coming in at more than \$500,000; that appraisal is due December 12. Once the purchase is accomplished, the land would be conveyed directly to the Trust. The Town would issue an interest-free mortgage to the Trust, an escrow agreement, and a MOU. He discussed the basic terms of the mortgage. The Trust would have to pay 50% of the loan by 2022, with the remainder due in 2028. He also said there will not be a windfall in the event of a default.

Councilor Kuhn asked for more explanation on the default item.

Suzanne Lowell of Bernstein Shur, representing the Town, said if the trust defaults on the note and the Town forecloses, sells the property and realizes a profit, the mortgage reads that any payments the trust has made would be returned to the Trust.

Mr. Poore said the MOU and escrow agreement had not addressed the demolition of the existing buildings and mitigation of the invasive plant species. The Town had assigned \$50,000 for this task; the new agreement allows for the Trust to demo the building, and they whatever is left in that money will be turned over to the Trust as a stewardship fund, to allow them to manage the property.

Chair Hemphill said the invasives are at such an advanced stage they are affecting the value of the property. He felt this change to the agreement is a reasonable solution.

Councilor Svedlow thought there was an invasive management plan that was in place as part of the master plan; it felt like the Town is having to do something that someone else was supposed to do a while ago.

Mr. Poore said the understanding is that the appraisal will come in much higher than \$500,000; the owner is agreeing to sell it to the Town at a discount price, but the Town will pick up any of its liabilities with it, including the invasive issue.

At Councilor King's question, Mr. Poore discussed TV-5. The intent was to hold this for future expansion of the wastewater plant. There will be a buffer kept between the facility and developed properties. Much of the property is wet, and it has a vernal pool, so it will be held for future wetlands mitigation grant opportunities. If a mitigation grant comes in and puts the Town over the \$500,000, the Trust wants to split the difference with the Town, to bolster their stewardship fund.

Mr. Poore said these changes will be incorporated into the documents and they will come back to the Council for review on December 10.

Councilor King asked about the right of first refusal in the purchase and sale agreement; it allows the seller to repurchase the property within 30 days if the buyer wants to sell it to a third party. She said that is a tight turnaround for the Council to make a change.

Ms. Lowell said that is a conventional timeframe, except in the case of municipalities. She suggested either 45 or 60 days.

The Council asked for the timeframe to be changed to 45 days.

Councilor Kuhn wondered if there should be language, perhaps in the preamble of the MOU, that the Town expects the Trust to enter a capital campaign, in order to lay out the Council's expectations.

Mr. Poore agreed and said there should also be language on the Town's expectation regarding the invasives mitigation.

Mr. Poore said this item will be brought back to the Council on December 10, and a special Council meeting will be convened on December 20 early in the morning to execute the final documents prior to closing.

Councilor Cahan wondered if, in the case of a third-party offer, the Town would have to match the offer in order to repurchase the property. Ms. Lowell said no; the purchase price is outlined in the document.

Mr. Poore said the Trust is instrumental in managing all the open space in town; having a strong Trust benefits the town.

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

Item 10 Discussion of recommendations from the Highland Lake Leadership Team (HLLT).

Dennis Brown, of Pond Villa, chair of the HLLT spoke about their work in the past year. Much of their work has been focused on Windham. They have suggested several concepts but they do not have specific ordinance language and some of these concepts may be policy instead. The idea is to reduce the amount of phosphorus getting to the lake and most of their recommendations address that goal. One suggestion is to take photos of the shoreline and provide a method for code enforcement to review those photos in conjunction with GIS mapping; this would deter changes being made to shoreline without proper permitting.

Councilor Kuhn asked if this recommendation was to prevent people from doing things or to prevent phosphorus

Mr. Brown said there have been instances of people cutting down trees right on the shoreline, under cover of darkness.

Mr. Brown reviewed the remaining recommendations. The second one is to require a 3rd party review of all non-individual home development within lake watersheds. Falmouth does one now, but it is voluntary. Also, they discovered that DEP's review isn't very thorough; for large developments they rely on the experts hired by the developer. This is insufficient for a lake in trouble. Another recommendation is to require minimum manure management for large farm animals. DEP says even 5 horses would have an impact. There is a requirement from DEP that large developments must review their BMP inspections every 5 years; the Town does require these inspections on a periodic basis, but only on those that were built after the law was passed, and smaller phosphorus controls would not trigger these inspections. The final recommendation is to change the amount of phosphorus that is allowed to leave a development to a .02 lbs/acre/year. Any project requiring DEP approval would need to meet this requirement, but any development that only requires town approval does not.

Councilor King said most of these are directed toward multi-home development; she wondered how they address single-family homes.

Mr. Brown said requiring a single home development to hire an engineer to do a phosphorus management plan would be prohibitively expensive. The idea is to have a point system; a home would have to get a certain amount of points to get their building permit.

The Council asked the CDC and staff to do further work on this and bring it back at a later date.

Item 11 Introduction of amendments to the Code of Ordinances, Chapter 8, regarding temporary signs.

Councilor Svedlow outlined the changes to the ordinance since the prior versions:

1. Modify the 30-foot separation distance requirement between signs in the public right of way to mimic the State's regulation requiring separation between signs bearing the same, or substantially same, message.
2. Remove the more stringent limitations on temporary signs within esplanades and medians in the public right of way. Now, all temporary signage within the public right of way is proposed to be regulated in the same fashion regardless of location within the public right of way.
3. Reduce the maximum size of signage within the public right of way from 16 square feet to 7 square feet.
4. For signs on private property, replace the one sign per lot limitation with a 30-foot separation distance requirement between signs bearing the same, or substantially same, message.

Councilor Ferrante asked the purpose of the fourth change. Councilor Cahan said the original language said that someone could only have one sign per property; she didn't feel that they should limit the number of signs on a property.

Councilor Ferrante thought they were only dealing with the one issue, temporary signs in the right of way. She was surprised that there were this many changes to the work of a previous committee.

Councilor Ferrante asked about the reduction of the maximum size; they had kept it larger on purpose in consideration of larger areas. They are also now allowing signs in the medians without limitation.

Councilor King said that restriction is not enforceable and difficult to defend. The median/public way issue was discussed at length.

Councilor Asherman said the median is a demonstrated public forum. It would be a battle to fight signs in the median.

Councilor King said the size change came from that; if they were going to allow signs in more public places, they didn't want to allow larger signs.

Councilor Kuhn said the other changes followed the decision to allow signs in median, as efforts to reduce the impact of those.

Councilor Cahan felt the medians have already been established as a public forum and that cannot be removed.

Chair Hemphill asked how they determined the 7 sf restriction; Councilor Asherman said it reflects the average realtor sign, which are larger than the typical political sign.

Councilor Ferrante asked how real estate signs fall on the temporary or permanent sign ordinance.

Ethan Croce, Community Development Director, said they can be either; if someone wanted to go to Planning Board for approval of a permanent real estate theoretically they could do that. It is unlikely; he felt most people would choose to place them under the temporary sign provisions. Those signs are limited to 42 days in a year in the public right-of-way; on private property it is limited to 120 days.

Councilor Ferrante did not agree with the fourth proposal; anyone can put a sign in the right of way in front of someone else's house. She didn't see any reason for this proposal.

The Council discussed that proposed change. Councilor King said this provision would allow a property owner to place "no hunting signs" on their property at intervals. One sign on a large property would not be sufficient.

The public hearing was scheduled for January 14.

Item 12 Discussion about November 15th public forum on residential density and recent zoning changes.

Chair Hemphill said LPAC is scheduled to meet Wednesday to discuss the forum and will provide feedback to the Council.

Mr. Poore said LPAC is going to collect data on development in town since the changes went into effect before they report back to the Council.

Councilor Cahan felt there was a lot of concern raised about the changes to lot sizes in the RA district. She wondered if the Council wanted to wait the 3-4 months for LPAC to make their report; if not, she suggested that they look at an ordinance amendment to revert RA back to the 20,000 sf with 100 liner feet of width. She thought staff could draft some language to protect those lots that have changed since the zoning went into effect. She looked at some of the lots that are impacted; they are on narrow streets that she didn't think had the capacity for additional lots. She was concerned about emergency access.

Councilor King said they shouldn't rush to a solution. It isn't just about RA. The Council has asked LPAC to undertake a process. The original process to get to these changes was long and methodical. If Council wants to do something unrelated, an emergency measure if they deem it warranted, that is different. That would have ramifications. Changing the language in one district for an undetermined time, and then changing it back, would create difficulties for code enforcement. They need to identify the problems, and she felt there could be small changes to the ordinance as it is to address those problems.

Councilor Kuhn said no one did anything wrong in the original ordinance process; it was a major change and it seems like some of the changes are not working out as planned. She was sorry that people felt like they didn't get notice of the changes; there were postcards sent to every residence. It is hard for people to understand how change might impact them. She felt it was clear that there is a need to go in and make some adjustments. She came away from the forum with a sense of urgency. In RA, there are streets that are changing before residents' eyes. The typical Council process is very slow and would mean no change would come before next summer and there is irreparable harm being done now. She was interested in a process that allows them to buy some time to do it the right way.

Councilor Ferrante never supported the 50-foot lot width in RA. RA is a big zone, and while she understands what the intentions were, she felt it was important to respect what was done, but also to make some changes. She has seen some of the data and it isn't alarming. Addressing this by this summer doesn't feel like a long time to her. She wanted LPAC to conduct their process. She doesn't want to be reactionary about it, but to be

smart about it. She didn't want to discount what is happening but also pointed out that there are some success stories. There are several people that are happy about the change. She said the Council only hears the negative impact; she wished they could hear from people who supported the changes as well, so they could have a balanced view. The forum had 80 people, and even some of those people supported it. She felt this is too big to make changes quickly, but she didn't want them to drag their feet either.

Councilor Svedlow agreed with Councilor Ferrante; he felt the purpose of the zoning change was to direct growth away from rural parts of town and toward the more developed parts of town. He felt they over-incentivized growth in the growth areas. He didn't think they should do anything too hasty. He felt there was an urgent issue in RA and it should be addressed this winter. They should also evaluate the goals. Even though the original public process was conducted fairly and under best practices, the feedback is that it wasn't enough. He felt this process should take 2-3 months at most.

The Council discussed the process and how it should be conducted.

Councilor Cahan said she moved here from a very dense city, where homes are on 6000 sf lots. Living in this type of community is very different than living on half an acre. Those people who bought into an area where they live on half an acre wanted a certain type of life and are now seeing that change. The question is whether they want to see this type of development in RA. Falmouth is not built for this dense development; the roads are not big enough. She felt people are seeing this as opportunity to make money; and she wondered about the cost of that. She said they should address this as quickly as possible.

Councilor Kuhn said there may only be 25 permits that have been pulled, but they also have to consider all the lots on the multi-listing service that haven't come to the Town yet. She suggested they ask LPAC to come to the next meeting and see if they can meet a 2-3 month goal to address the issue.

The Council's liaison will ask LPAC to make the RA discussion the priority in the review at their next meeting.

Councilor Ferrante pointed out that there are many neighborhoods in RA that are already 50-foot lots. She thought the Councilors that worked on the ordinance heard that people love those neighborhoods and it isn't a bad thing to see more of that. She didn't support 50-foot lot widths in all of RA. She thought they should have a robust conversation about the process they use to get information to people about zoning and how to create more education opportunities for people to be informed about these issues. She wondered if they could gather data on the initial process; how many forums there were, how many people came, etc.

Councilor Kuhn asked if staff could provide a brief history of the public process that went into the 2016 amendments. She wondered if they can look at short-term fixes and longer-term considerations.

Councilor King understood that suggestion but said LPAC may have thoughts about that. When the original amendments came through, they went forward together because they were all tied together.

Item 13 Discussion about changing the monthly special Council meeting/workshop to a second monthly regular meeting.

Mr. Poore explained that, prior to 2007, the first meeting of the month was a workshop meeting and no action was taken. It was changed to a special meeting to allow for some, small actions to be taken, but has evolved into a meeting that substantially similar to the regular meeting of the month.

Councilor Svedlow asked if they would be required to hold it if it was a regular meeting. Mr. Poore didn't think so. The rules require only one regular meeting per month.

Councilor Svedlow supported the change, allowing public forum and the pledge at both meetings but asked to have a bent toward more workshop items at that first meeting.

Chair Hemphill wondered if they continue to call it the special meeting but add public forum to it. They have been asked to allow more opportunities for the public to speak at Council meetings.

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Mr. Poore said they try to schedule items less by type, such as workshop versus business, and more to balance out the length of the meetings.

Councilor Ferrante liked having the distinction between the two meetings, she liked to have the option of having more workshop discussion items and placing them together in one meeting. Mr. Poore said that would be very subjective.

Councilor Svedlow suggested adding public forum to the special meeting, as well as a standing item that allows the Council to discuss a matter they choose.

Chair Hemphill recommended adding public forum to the special meeting; Councilor Kuhn, Councilor King and Councilor Asherman agreed.

The Council also discussed adding the Pledge of Allegiance to both meetings.

Adjourn

Councilor Ferrante moved to adjourn; Councilor Cahan seconded. Motion carried 7-0.

Meeting adjourned at 9:58 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary