

# **Town Council Meeting Minutes December 20, 2018**

The meeting was called to order at 7:30 am.

## **Roll Call**

Councilors Kuhn, Asherman, King, Hemphill, Cahan, and Ferrante were present and answering roll call.

Councilor Svedlow was absent.

## **Item 1        Orders to execute all documentation and approve a supplemental appropriation and transfer of \$575,000 from unassigned fund balance to be used for the costs associated with the purchase of land known as Tidewater Village #5 and Tidewater Farms #1, #2, and #3.**

Mr. Poore explained that the first order authorizes the purchase of the property, the second allows the sale of portions of the property to the Land Trust, and the third is the supplemental appropriation which includes the sale price, the stewardship fee, and some soft costs, including legal fees. The appraisals for the property have come in: TV-5 appraised at \$750,000, and the lot that includes TF-1, TF-2 and TF-3 came in at \$710,000 for a total of \$1.46 million. The goal is to go to closing today; if not, by the end of the calendar year.

Chair Hemphill opened a public comment period

Michael Vance of Blackstrap Road, President of the Land Trust, thanked the Council and staff for all their work on this project.

Chair Hemphill closed the public comment period.

Councilor Asherman moved order 62-2019; Councilor Kuhn seconded. Motion carried 6-0.

Councilor Asherman moved order 63-2019; Councilor King seconded. Motion carried 6-0.

Councilor Asherman moved order 64-2019; Councilor Kuhn seconded. Motion carried 6-0.

## **Item 2        Workshop discussion on a proposed mixed-use development at the Falmouth Shopping Center property and Turnpike Spur Ramp area by 122 PTIP, LLC and 20 Thames Street, LLC.**

Chair Hemphill explained that this discussion is the continuation from the Council's last discussion at their December 10 meeting.

Mr. Poore said the Council had asked for an estimate of the economic impact of the proposed development on the town. Mr. Poore said staff's ability is limited to estimating the impact on the Town's finances. The scenario they did is based on estimated valuation for the property and the creation of a TIF district for the development. He gave a presentation on the TIF district scenario and the types of expenses it could cover, including staffing, facility improvements at Fire/EMS and Public Works, a developer refund for the infrastructure improvements at the Turnpike spur interchange, transit expansion, stormwater management, economic development, road paving and infrastructure, wastewater infrastructure, open space and recreational infrastructure. The total would be approximately \$77 million over 30 years. He detailed each of the suggested expenses, and how staff thought they would benefit the Town. Many of the items are expenses staff see in the future anyway, regardless of whether there is a TIF. Moving expenses into a TIF district from the general fund helps the Town maintain the mil rate. He showed where a projected new TIF at Falmouth

Center would fill the gap left by the expiration of existing TIFs. He said future development may also help fill that gap, but they can't predict that.

Councilor Kuhn pointed out that this chart displays income, but not any added expenses from the development.

Mr. Poore agreed; he consulted with staff at various departments including Police and Fire/EM. Staff felt there might be incremental costs but didn't feel it would be that significant.

Councilor King asked if the TIF would be based on a specific development plan. Mr. Poore said they have to use a projection of valuation to create the TIF scenario. He thought it was a safe bet that the plan won't come out exactly, but it is common for the Town to revise a TIF plan every four or five years. The past TIFs have typically overperformed their projections.

Councilor King wondered if they can create a TIF however it moves forward. Mr. Poore said they can create a TIF on any property in town and capture any increase in value. The Council has to approve a TIF development plan that gets submitted to the State. There are many different variations to TIF districts.

Councilor Kuhn said any development that happened in this parcel could be included in a TIF, even development in conformance with current zoning. Mr. Poore said yes.

Councilor Cahan pointed out that school costs were not factored in to an estimate of increased costs, nor were they factored in with LPAC's work. She doesn't see them included in any land use planning and said that is a problem. She asked staff to return with a report on how they can tie that in with land use decisions.

Mr. Poore said they have looked at it, but not formalized it. They looked at it when Foreside Estates was planning an expansion. The assumption is that this particular development would have less impact than that one would have, since it is proposed to be a 55+ age restricted housing. There would still be some students even with that age restrictions.

Councilor Kuhn said the report from the schools at last week's Finance Committee meeting stated that the schools can absorb 25 more students over the next 3 years. Councilor King said growth may occur even if they do nothing, and the schools figure out how to make it work.

The Council reviewed the requested zoning changes. In response to a previous request of the Council, the developer has recently submitted a "Plan B" which shows what kind of development could be done on the site under the current zoning.

Councilor King asked about the outdoor recreation facility allowance in VC-1 and what it was intended to permit.

Ethan Croce, Community Development Director, said the proposed field would qualify as an outdoor recreation facility, which is an allowed use in VC-1 but not in BP. Included in the VC-1 use table is a ground floor tenant area limitation of 50,000 sf. It doesn't apply to the field; it limits the indoor space of a building associated with that outdoor use. Golf courses, for example, are larger than 50,000 sf and would not be restricted, but a clubhouse associated with it would be limited to the 50,000 sf. Same with an outdoor pool use: the pool itself would not be limited, but the pool house would be.

Councilor Cahan asked for clarification that they would have to lay a foundation for the artificial turf, but that wouldn't count as a structure and if they had netting all the way around the field it would not count as a wall. Mr. Croce said that was correct; it might count as a structure, but not a building. The limitation only applies to buildings.

The Council discussed whether the intent of the VC-1 was to include outdoor recreation or to create a lively, mixed-use area.

Councilor Ferrante asked whether the proposed field is located in VC-1 or BP. Mr. Croce said the conceptual master plan shows the field bisected by both zoning districts. A portion of the field lies in each district, and it would not be allowed in BP.

Councilor Cahan asked what else could be put in the 70,000 sf building if the soccer facility went away. Mr. Croce said it could include any of the uses that are defined in the ordinance under “wholly enclosed places of assembly, amusement, recreation, culture, and government” and listed some of the activities that would qualify.

Councilor Cahan asked if the “assembly” would include a church. Mr. Croce said churches are defined separately but are allowed in VC-1.

Katherine Detmer, of Archetype Architects, representing the developer, spoke about the zoning district boundary and the Plan B location of the fields. The general provisions of the ordinance address a situation where a lot is bisected by a district boundary. The ordinance allows for the district that governs the largest portion of the lot to be extended by 30 feet into the second district. This would allow the fields to be located as shown on Plan B.

Councilor Kuhn said the developer gets to pick the tenants not the Town, as long as the uses are allowed by the zoning. There is a general sentiment that residents don’t want their town center built around an elite soccer program that is available only for those that can afford it. She clarified that the Council doesn’t have any say in that; the developer gets to pick their tenants.

Councilor Ferrante doesn’t interpret the proposed plan as the town center being built around the soccer field. In contrast to Plan B, the original plan has the soccer field out of sight behind everything else. Her concern about the field is the residents that would be impacted by it, and her job is to mitigate that impact.

Councilor King thought the hotel would be allowed under the zoning ordinance to the west side of Route 1, and not on the east side. Mr. Croce said that restriction is only in BP; the location of hotels is not restricted in VC-1.

Councilor Cahan pointed out that these are zoning changes which go with the land and would remain in effect even if the land was sold to a new owner. Councilor Kuhn pointed out that this was different than a master plan, which would be tied to the parcel.

Mr. Croce reviewed the requested zoning changes:

- Allow light poles associated with outdoor fields to be up to 80 feet tall subject to performance standards to minimize impacts.

Staff would work to draft specific performance standards to minimize glare and spillover to the greatest extent possible to minimize impact to residents. He pointed out that the current ordinance does not preclude a light pole 80 feet high, but it does require a formal waiver from the Planning Board. This provision would remove the need for a waiver.

- Allow existing car wash to be moved and classified as a permitted use but cap the number of car washes allowed in the zone at one and limit the maximum size to 8,000 square feet.

Car washes are currently prohibited in VC-1. The new car wash would have to meet current VC-1 standards; the current one does not.

- Allow one Wholly Enclosed Place of Assembly/Recreation tenant (e.g. indoor sports field) to be up to 70,000 square feet in size provided the building is setback at least 600 feet from Route One.

The current ordinance would limit this type of tenant to 50,000 sf. The proposal shows the building at more than 600 feet back from Route 1.

- Require a minimum of 50% of all ground floor area in every building to be retail, grocery retail, or restaurant use. (Exceptions for the following buildings: Parking garages; car wash; one multi-family building; hotels, one Wholly Enclosed Place of Assembly/Recreation.)

A building of 10,000 sf would require 5,000 sf of the ground floor to be one of these uses. The upper floors would not be restricted beyond what the current zoning would allow.

- Require at least 50% of all ground floor tenant areas associated with retail, grocery retail, and restaurant uses to be no larger than 15,000 square feet. Allow one multi-family building to have residential use on the ground floor provided the building is setback a minimum of 500 feet from Route One.

Town staff has suggested a lower threshold of 5,000 square feet. Town staff has also requested the developer submit language that would discourage or limit wide street/store fronts. Lowering the limit of tenant floor area may accomplish this objective. This would make the area pedestrian-friendly.

- Outdoor recreation allowed from 7 am to 10 pm. Require field lighting to be shut off within 15 minutes of end of field use. Limit the number of outdoor fields to two. Prohibit bleacher seating and PA systems.

This is intended to address the concern about the town center being built around an elite soccer facility by limiting the size of the facility and mitigating the impact on abutting property owners. This is not currently drafted to address concerns about whistles being used at games.

- Require the entire site to be brought up to current stormwater standards with the submission of any site plan to the Planning Board. This shall include treating all existing impervious area on the site as new impervious area. (No credit given for existing impervious area.)

None of the currently existing impervious surface at the site receives any stormwater treatment at all, due to the age of the development. That impacts the quality of the water going to Webes and Mill Creeks. Under this proposed standard, the first site plan submitted to the Planning Board for any development at the site would require treatment of all stormwater leaving the entire site to be brought up to current stormwater standards.

- Relaxation of architectural standards for the Wholly Enclosed Place of Assembly/Recreation as follows:
  - Section 19-11.5.5.3 – Allow use of metal siding (excluding corrugated), polyash siding and fiber cement siding.
  - Section 19-11.5.5.4.a – Allow less visible sides of the building (those facing the woods) to be designed to a less stringent architectural standard.

Councilor Cahan said the buildings she has seen so far have been pretty basic and she wondered what the impact would be of this relaxation. Mr. Croce said their expectation is that the buildings would have to be designed to meet all the architectural standards in every way unless the Council grants any relief from those. These are the only exceptions the developer is requesting.

Chair Hemphill asked Mr. Croce to discuss the differences between zoning versus a master plan process.

Mr. Croce said the threshold is what the Council would hope to accomplish with a master plan that couldn't be accomplished with zoning. There hasn't been any discussion of a master plan with this project to date.

Councilor King asked if the whole first floor of a building could be a parking garage and then they would be exempt from the first-floor limitations. Mr. Croce said they would need to be careful on how they drafted that parking garage exemption, so that a building couldn't have 10 spaces on the first floor, call it a parking garage, and then be exempt from the standards. It can be addressed with careful wording of the ordinance.

Councilor Cahan was concerned with the request that the back of a building not be required to meet architectural standards, when there are residents that will be looking at the back of the building. She opposed that request.

Chair Hemphill felt they should hold specific discussion on zoning language until after they hear from the public. He is proposing a public forum in early January.

The Council discussed the differences between a master plan and zoning and which path would accomplish their goals.

Councilor Asherman said the benefit of a master plan is the ability to hold this developer or any future developer to this particular plan. A zoning change would allow them to draft a completely different plan, as long as it met the new zoning. There is more control for the Town under a master plan rather than a zoning change. Mr. Croce confirmed that. If the Council believes that this is the best plan that could be put together, and they want to see it built out substantially similar to this, zoning would have a harder time accomplishing that. Mr. Croce said if the Council's concern was primarily to mitigate impacts to abutters, the zoning that has been proposed has tried to address that with stringent lighting standards, promoting the mix of uses and strong stormwater standards. He said the question is what goals the Council might want to achieve that can't be achieved with zoning language.

Councilor Kuhn said a developer isn't required to complete a master plan. It is possible they could get the soccer complex and nothing else. Mr. Croce that said is correct. If this, or any developer, wanted to make any changes to a master plan, they would have to return to the Council for approval.

Councilor Ferrante said the benefit of a master plan is that what they see is what the developer is allowed to do. With zoning the development could change dramatically, and the developer would have more leverage.

Mr. Croce said that gets to the question of how much the Council wants to regulate with the development. There is a wide spectrum of things they could regulate: the height, footprints, gross floor area of specific buildings for example. Staff would need to know exactly what the Council would want to regulate.

Councilor Ferrante said she is not trying to regulate any more than the zoning regulates now, but the developer has outlined specific buildings and their uses on the concept plan submitted. If they change the zoning to accomplish the requests, it wouldn't stop him from changing the plan substantially.

Mr. Croce said, with the exception of the sports arena, the hotel, and the gas station, the uses outlined on the plan are more general than not. All the buildings of the commercial core are generically labeled "mixed-use". Councilor Ferrante said there is a chart that was submitted that showed square footage of proposed buildings and they could drill down on that.

Mr. Poore said the lack of specificity of use is why staff recommended the restriction on the ground floor use, to ensure the pedestrian-friendly, mixed-use type of development that is proposed. He felt that all of the current zoning, along with the proposed changes, would combine to force a development that is markedly similar to what is proposed.

Councilor Asherman asked if a master plan would fix the developer into building exactly what is on the picture, including building locations, sizes and uses. Mr. Poore said they could do it a number of different ways; he thought they could have different areas showing different buildings and uses. He felt they are doing a good job with mixed-use with the zoning, and the bulk, height, and size of buildings are also well covered by VC-1.

Chair Hemphill felt a master plan was not advisable. It is a big project and it is important how it turns out, but they have been working on specific zoning to govern how it turns out. He said Tidewater's master plan came back to the Council again and again. He didn't see the benefit of the Council sitting on this project in perpetuity with a master plan. He felt they can define this extension of village center zoning with the ordinance language. Councilor King agreed; the Council needs to develop the confidence that this VC-3

would be adequate to meet their overall objectives, that there isn't an undue impact on abutters, that there is a vibrant service center, that the traffic impacts are addressed, and environmental impacts are minimal. She felt they can rely on the Planning Board and other processes to look at this. She asked how the Council can use their skills best to ensure the best development so that it doesn't always have to rely on Council.

Councilor Ferrante was concerned about how different the development would look under a new zoning district instead of a master plan tied to this concept plan.

Councilor Kuhn wondered how they can address the traffic impacts of the development, both travel and environmental impacts. She didn't think they can address it with either zoning or a master plan. Councilor Cahan said they are still lacking information on the traffic. She asked staff if they can see that information when it is submitted.

Councilor King said traffic is a huge concern and it is really important to the Council. She wondered if they can wait to complete the zoning until after they see the traffic study.

Councilor Ferrante wanted to know if the Council could weigh in on the traffic mitigation.

Councilor Kuhn felt the concern was that DOT has final say on traffic mitigation, and if DOT says they need to go to four lanes, they can't go back.

Mr. Croce said typically the DOT TMP process is done concurrently with the Planning Board permitting process. The developer has already submitted preliminary data, but they haven't submitted an analysis on the impacts on the intersections and what mitigation will be required. The Town will not know that before both the DOT and Planning Board permitting processes are complete.

Councilor Cahan asked for a staff analysis on how they can look at, and have a say in, that information.

Mr. Poore summarized that the Council wants to know their options for weighing in on the traffic before approval and also for stopping an approved development that impacts traffic in a way they do not support.

The Council scheduled a public forum for this project on January 14, 2019 at 6:00 pm.

**Item 3            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 Asherman moved the order; Councilor King seconded. Motion carried 6-0.

The Council entered executive session at 9:47 am and did not return.

Respectfully submitted,

Melissa Tryon  
Recording Secretary