

Town Council Meeting Minutes April 22, 2019

The meeting was called to order at 7:00 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 Order to go into Executive Session pursuant to the Laws of Maine to discuss legal rights and duties in connection with the acquisition of real estate rights with the Town's attorney pursuant to 1 M.R.S.A. § 405 (6) (C) and (E).

Councilor Svedlow moved to enter executive session; Councilor King seconded. Motion carried 7-0.

The Council entered executive session at 7:01 pm and returned at 7:14 pm.

Item 2 Public Forum

Michael Doyle of Portsmouth, NH was troubled by a review of the school department payroll – there are more teachers earning \$100,000/year than some other towns. He felt these people are overpaid. He discussed the payroll numbers from Cape Elizabeth. He spoke about the news that the Falmouth House of Pizza is being forced out of the Shopping Plaza by Cohen and Soley after 41 years of business. He said this is unacceptable and he wondered why the Council wants to do business with people like this.

Valentine Sheldon of Route 88 was grateful for the data that the Town provided on growth and density in response to the SaveFalmouth.org numbers. He said that since 2016 the mil rate has increased 16.1%, or 4% per year. He felt there should be more debate on the budgets that are brought to the Council, both School and Municipal. During the budget public hearing there were only two comments. He thanked LPAC for including a public comment period on their next agenda, for having a transparent, robust agenda and for recording their last meeting, even if it was only audio. He supported the proposal to make two- and multi-family dwellings conditional uses in RB and RD. He said more needs to be done in those districts regarding the density allowed under current zoning.

Police Chief John Kilbride announced that on May 11 at the Police Department from 10:00 am to 2:00 pm they will conduct a program to collect unwanted and unused firearms and ammunition. This is in conjunction with Maine Gun Safety Coalition and they will also provide gunlocks and firearm safety tips. Surrendered firearms will be chopped up and turned into garden tools.

Item 3 Consent Agenda

- **Order to approve the minutes of the March 1, 2019, Town Council Workshop Meeting**
- **Order to approve the minutes of the March 8, 2019, Town Council Workshop Meeting**
- **Order to approve the minutes of the March 11, 2019, Town Council Special Meeting**

- **Order to approve the minutes of the March 25, 2019, Town Council Meeting**
- **Order to approve the minutes of the March 28, 2019, LPAC/Town Council Joint Meeting**

Chair Hemphill opened a public comment period.

Michael Doyle of Portsmouth, NH made a comment about council rules regarding the orders.

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

Item 4 Report from Council Committees and liaisons regarding updates on assignments.

Councilor Svedlow said on May 7 at 6:30pm at Lunt Auditorium the Conservation Commission is hosting a program by Nancy Olmstead, who will speak about the top invasive plant species and what can be done about them.

Councilor Kuhn said the Community Programs summer brochure is out and registration is open.

Councilor King said at their last meeting LPAC reviewed their work and the process on RA zoning. They are making some internal changes at the committee and are awaiting their next assignment.

Councilor Cahan said REAC are researching bans on plastic bags, straws, and Styrofoam

Councilor Ferrante said FEIC is discussing a new business forum to focus on small businesses. They are looking at a date in late June.

Item 5 Report from the Appointments Committee and order regarding various vacancies on Boards and Committees.

Councilor Ferrante said the Committee recommends Charles Sanders to the Harbor Committee as the representative for the Portland Yacht Club.

Chair Hemphill opened a public comment period.

Michael Doyle of Portsmouth, NH said he recently reviewed the membership of Falmouth committees and said there were few Republicans serving on committees, and no chairs were Republicans.

Keith Noyes of Gray Road wondered why there was still an open seat on LPAC.

Councilor Ferrante responded to that concern; they have interviewed two people and are preparing to appoint someone at the next meeting.

Chair Hemphill closed the public comment period.

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

Councilor Ferrante reported that the committee has discussed the current Human Services Committee and whether to expand their charge, increase the committee size and rename it to something more related to wellness in the community. They will bring this to the Council as an agenda item at the next meeting.

Item 6 Order to authorize the Town Manager to execute a quit claim deed for Map U48-024, upon receipt of full payment of all taxes and fees.

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

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

Item 7 Order to approve the FY20 Municipal and School Department Budgets in accordance with the Town of Falmouth Charter, Article 5, Sec 502.

Chair Hemphill opened a public comment period.

Michael Doyle of Portsmouth, NH felt the spending in Falmouth is out of control in a number of areas. He said by his calculations the Town overpaid for heating oil and office supplies years ago. He said there isn't enough competitive bidding for services. There is no need for this level of spending.

Valentine Sheldon of Route 88 reiterated that the mil rate has gone up 16% since 2016; that is 4% per year and twice the rate of inflation. There was little to no debate on the budget when it was presented, and he felt there should be more robust debate about the money they all pay.

Chair Hemphill closed the public comment period.

Councilor King moved the order; Councilor Kuhn seconded.

Councilor Ferrante was adamantly against raising the mil rate and agreed that there is a lack of input from the residents. The rate keeps rising each year. She had a lot of concerns about residents being able to stay in town and is shocked that they are not talking more about this.

Councilor King said they were able to hold it flat for a while; the Town side has gone up 3% and other towns in the area have gone up much more. Town staff have been very responsible. Every Finance Committee meeting is open to the public and there are a lot of questions asked of staff early in the process. The process is accessible. She believed in what the department heads are doing and have put out there.

Councilor Kuhn assured the public that the Council does not rubber stamp the budget. They review the budget line by line over months of meetings and get to question everything.

Chair Hemphill attended all the meetings and is comfortable that the school and municipal department heads have worked to keep costs to a minimum and provide the best value to residents. He felt they do a better job than other neighboring towns. He felt this is a good budget.

Councilor Svedlow said the trouble with raising taxes is that it is a one-way street. They do not go lower. He said he sees mil rates all over New England and Falmouth has a low mil rate for the level of service residents receive, especially the school. He doesn't like to raise it and wanted to caution them about raising it so often.

Councilor Cahan spoke about the process around the way commercial developments are proposed and approved; she wanted to see a way to encourage business growth. She didn't see any fluff in the budget and it is only going to get more expensive, especially public services like Police and Fire. She said they need to create an environment where businesses feel like they can come to town.

Councilor Ferrante said the meetings were accessible and didn't think there is anyone who works for the Town that doesn't work very hard. She didn't know where there is flexibility in the budget and agreed with Councilor Cahan that they need to increase the tax base.

Councilor King said if there are seniors that are having difficulty with taxes they should contact the Town about the senior tax relief program. There are some funds available to help.

Motion carried 6-1 (Ferrante opposed).

Item 8 Order to approve the FY20 Budget Capital Improvement Plan and Tax Increment Financing District Plan.

Mr. Poore said there is a lot of money in this budget this year due to the Route 100 project. They don't spend this much money every year. This will not impact the mil rate; these funds come from the TIF district.

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

Councilor Asherman moved the order; Councilor King seconded.

Councilor King said the CIP and TIF funds are tools that help the Town keep taxes down.

Motion carried 7-0.

Item 9 Order to approve the FY20 Sewer Department Enterprise Budget.

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

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

Item 10 Order to adopt new sewer service rates, effective beginning with the normal billing cycle occurring after July 1, 2019, to fund future infrastructure projects.

Councilor Ferrante asked what the residential rate was before. Mr. Poore said this is a scheduled 3% increase; it has been raised each year the last few years and will continue the next several years. It is a 10-year plan. It was instituted during the improvements to the Mill Creek pump station and will also fund future improvements to the collection system, which is aging. They are trying to pay some of that in advance rather than borrowing. The rates are at the mid-point range when compared with other wastewater districts in the area.

Chair Hemphill opened a public comment period.

Valentine Sheldon of Route 88 said since 2016 the sewer rate has increased 19%. He realized they need to save for needed improvements, but that is a very large jump. Increasing 3% per year over 10 years is a large number and he was concerned about residents on fixed incomes.

Keith Noyes of Gray Road asked about billing; he said the rate for a single-family home is the same as a home with nine bedrooms. He didn't think that was very fair.

Mr. Poore said a later agenda item tonight includes a proposed amendment that would address fees. He discussed the details of that proposal.

Pete Clark, Wastewater Superintendent clarified that the proposed amendment address connection fees, not user fees. User fees have not been discussed recently but has been on the Ordinance Committee list to discuss. They have done some analysis to base user fees on consumption. It would be a complicated transition. The current rate is a flat fee and easy to administer.

Chair Hemphill closed the public comment period.

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

Item 11 Order to set FY20 real and personal property tax due dates.

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 12 Resolution to recognize Arbor Day and become a Tree City USA Community.

Nancy Lightbody of Falmouth Road, chair of the Conservation Commission, announced that there will be a tree planting ceremony on Saturday, April 27 at 12:30 at the intersection of Route 1 and Route 88. They are planting a white oak. Tree City USA designation has been a part of the Council's annual workplan since 2017. She recognized Town staff and especially commission member Rich Bicknell who worked so hard on bringing this to fruition.

Councilor King said this was brought up when they were working on the Climate Action Plan many years ago. She spoke highly of the program.

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

Councilor Cahan moved the resolution; Councilor Asherman seconded.

Jay Reynolds, Public Works Director, said the tree will be at the start of Route 88 along the side of the road, not in the median. It will be a street tree.

Chair Hemphill and Councilor King read the resolution into the record. Motion carried 7-0.

Item 13 Public Hearing and Order relative to a new license for the Cumberland Farmers' Market Association to establish a summer and winter market.

Chair Hemphill opened the public hearing; there was no public comment.

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

Item 14 Public Hearing and Order to acquire property rights relating to the Underwood Road Drainage Project.

Mr. Poore said there is an old outfall at the end of the road which serves a huge catchment area and has high energy during storm events. It is causing erosion and some slope failure on the abutting private property. The property owner is going to do work at the same time as the Town's project. There is a public need to redesign this system. The plans call for a series of stepped catch basins to control the water flow. It is a tight neighborhood and the Town needs to acquire some property rights in order to complete the project. The Town conducted an eminent domain process and hired an appraiser to assess the property to ensure the property owner is compensated fairly. The appraiser determined the value as just under \$5,000; the Town is rounding up to \$5,000 in compensation.

Chair Hemphill said he spoke with property owner Walter Libby, who is now agreeable to this solution. Chair Hemphill felt Mr. Libby's property will be enhanced and the conditions in the area would be dramatically improved by this project.

Mr. Poore said the town will take approximately 900 sf of property; it is not a large area.

Councilor Asherman clarified that they are not taking the land itself; they are taking an easement over it.

Councilor King supported this; there is definite public need. Councilor Kuhn agreed.

Mr. Reynolds said they filed the notice of intent on April 8 and the signed notice was posted in public places in accordance with state statute.

Chair Hemphill asked about the plan for the work. Mr. Reynolds said the order, if approved, would be filed at the Registry of Deeds and the Town would acquire the rights. The Town can then move forward with permitting through the Army Corps of Engineers, which will occur this summer. They hope to bid this out in fall of 2019, and then begin construction in spring 2020.

Chair Hemphill opened the public hearing.

Keith Noyes of Gray Road asked about the runoff from the street; he said it is polluted and wondered if there was a plan to treat it.

Mr. Reynolds said stormwater is handled differently than sewage. The Town is regulated by the DEP and has a stormwater plan to reduce the environmental impacts. This 30-page plan includes elements such as education, street sweeping, etc. and the Town does everything they can to minimize the impact of stormwater runoff.

Valentine Sheldon of Route 88 asked if there is any opportunity as part of this work to make the pipe bigger. There are more storms and there is more development; he wondered about being proactive while they are doing the work.

Chair Hemphill closed the public hearing.

Mr. Reynolds said the current diameter of the outfall is 36" in diameter; the proposed plan is to increase the pipe to 48" diameter along with installing the catch basins. They will make sure the engineer is factoring future expansion upstream into the plans.

Councilor Svedlow said the Conservation Commission is reviewing the use of pesticides and fertilizers by private citizens in an effort to address pollution in Casco Bay.

Councilor Ferrante said the \$5,000 of compensation is more than fair for the size of the easement.

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

Item 15 Public Hearing on ordinance amendments to implement recommendations of the Highland Lake Leadership Team related to water quality in Highland Lake.

Dennis Brown, chair of the Leadership Team, said this represents two of the five recommendations; one is not an ordinance issue, but a policy issue. The other two recommendations are more complex and will take some more time to develop. He said the DEP review process is somewhat lacking and this would compensate for that. The other element of this addresses the amount of phosphorus a development can allow to leave the property and enter the watershed each year and would match Windham's regulations. The third-party review would compensate for changing expertise of the volunteers on the Planning Board.

Chair Hemphill opened the public hearing; there was no public comment.

An order was scheduled for May 13.

Item 16 Public Hearing on an Ordinance that will amend Sec. 18-131 Connection Charges; permit fees; accounting and Sec. 18-233 Exemption from connection charges.

Councilor Svedlow clarified that this is the fee charged when a new home connects to the sewer system.

Mr. Clark said this change to the sewer connection fee would correct some deficiencies in the existing schedule as to how commercial properties are assessed. The current fees were drafted in 1985 and do not consider the use. The proposed schedule would prorate the fee based on the fixtures in the building. A recent engineering report recommended that they base the fees on the unappreciated value of the system, which creates an equity ratio. He felt this is much fairer and more equitable than the current system. They are also asking to remove the current exemption from connection fees when a developer extends sewer. The application and administration of that are outside the realm of his department. He felt there are other mechanisms where developers can receive credit for a public benefit, credit enhancement agreements for example.

Chair Hemphill opened the public hearing; there was no public comment.

An order was scheduled for May 13.

Item 17 Public Hearing on amendments to the Code of Ordinances, Section 17.92.d regarding seasonal parking restrictions on Greenway Drive.

Councilor Cahan asked about notifying the residents. Chief Kilbride has not sent a notice, but they have heard from 3 or 4 of the residents.

Chair Hemphill opened the public hearing.

Dave Halligan of Greenway Drive felt the problem with parking is probably 90% on his property. He hoped the ordinance doesn't exacerbate the problem; they have taken the Andrews Avenue problem and made it Greenway's problem. The issue is Mackworth; there is plenty of parking on the island where it used to be a school. There will be problems though the Flats area if they restrict Greenway. There have been a number of break-ins on those vehicles over the years, and it is sometimes difficult to get out of his driveway. He would like to see some discussion between the Town and State on parking for the park.

Councilor Kuhn said members of the State delegation were going to take it up with the State. Councilor Asherman asked staff to follow up with Sen. Breen and Rep. Pierce. Councilor Ferrante agreed and asked what they can do on the local level.

Councilor King said they regulate parking on streets when it is a problem; in Falmouth people are allowed to park on the street in neighborhoods. Mr. Poore confirmed that on-street parking is allowed unless otherwise specified in the ordinance.

Mr. Poore said the Town has had regular conversations about this; the biggest issue on Mackworth right now is the condition of the buildings. He has been in touch with Rep. Pierce on that. The structure of who is responsible for what, as well the deed restrictions, on the island are quite complex. He will raise this at the next meeting of the stakeholders. Increasing the parking and access to the island may stress the island and its natural features.

Chair Hemphill closed the public hearing.

Councilor Cahan asked if there was a joint project they can do with the State to organize a remote lot with a bike share or scooter share. She wanted to make sure that all the people on Greenway are notified. Mr. Poore asked if she meant all of Greenway, or only in the area that is impacted – Route 1 to Fern Ave. Councilor Cahan clarified she meant the impacted area.

The order was scheduled for May 13.

Item 18 Public Hearing on the referendum regarding proposed amendments to the Town Charter, in accordance with M.R.S.A 30-A § 2528 (5).

Mr. Poore explained that the final charter report included a provision that prohibited town staff from serving on the School Board. This type of provision was deemed unconstitutional by the court. This was not identified in time for corrections to be made before the charter was sent to the voters in November. State statute allows minor changes to be made by the Council. This amendment would go before the voters in June.

Chair Hemphill opened the public hearing; there was no public comment.

Councilor Kuhn pointed out that, should this be approved by the voters in June, it will go into effect on July 1. The previously approved Charter amendments will take effect at the same time.

Item 19 Introduction of amendments to the Code of Ordinances Sections 19-9 and 19-10.1 to change certain requirements related to two- and multi-family residential development within the Residential B and D (RB and RD) zoning districts. These proposed amendments would be retroactive to May 3, 2019.

Councilor Cahan introduced the amendment. At the last meeting the Council discussed RA and moved forward an amendment to make two- and multi-family units conditional. They also discussed doing more analysis on RB and RD. The Council received an email from a former council member with concerns about the potential impacts to those two districts while they go through the process with RA. These types of units

impact sewer, traffic, road infrastructure, and the environment. It was concerning to her that these types of units didn't require further review. She didn't intend for this to be retroactive to May 3.

Councilor Ferrante would like this studied; she wasn't interested in moving this forward at this time. She would rather see this go to LPAC for analysis. She didn't think moving them to conditional use would do much, and she didn't want to rush into this.

Councilor Kuhn said this issue raised the problem of addressing one zone. She wouldn't be surprised if there were unforeseen consequences of rushing forward with the RA changes. She like the idea of moving this to LPAC; she wanted to look at it further but wasn't sure if it was premature to do it now.

Councilor King agreed with putting this suggestion through more of a process; they haven't done much with this yet. The conditions in RB and RD are quite different. This might be part of a suite of amendments for those districts. She supported engaging in a process and letting LPAC review this.

Councilor Ferrante said this would give the residents of those districts an opportunity to be involved. She wanted to review the dimensional standards for these units as well.

Councilor Svedlow would like to solicit more feedback and make people more aware.

Councilor Asherman was swayed by Councilor Ferrante's comments on moving this to LPAC. He liked the opportunity for residents to be part of the process.

Chair Hemphill agreed, but respected that this was brought to the Council's attention as a possible short-term problem due to the current efforts on RA zoning. This might create a runaway situation.

Councilor King said it helps to look at the development standards in RB and RD. RA allows 4 units per acre; RB allows 1.5 units per acre. Developers cannot get the return on investment in RB that they can in RA. She cautioned them about legislating without a full working knowledge of the standards.

Councilor Cahan agreed, but felt the difference will be less if they approve either of the proposed changes to RA. She was concerned because, after the discussion at the last meeting, she thought review of RB and RD would be a lengthy process. She agreed with sending it to LPAC and wanted residents of the districts to be informed but was concerned about it being a lengthy process. If LPAC had the capacity to address it quickly, she would support it going there first.

Councilor Ferrante felt this proposal was simple and concise enough for LPAC to work on quickly without opening the discussion on the comp plan. She felt discussion on the comp plan review is a larger conversation. If they can keep this concise on the two- and multi-family units, that might be enough.

Councilor King felt it might be important to do a review on the dimensional standards of the districts overall; she was hesitant about doing it piecemeal. She said it might not be a time-consuming as they think.

Councilor Kuhn felt they all agree that the zoning needs to be reviewed comprehensively, but this seeks to address a specific consequence that might come out of the changes they are considering for RA.

Councilor Svedlow felt it was a slippery slope to address little things that might affect little things, but this feels discreet and could likely be addressed fairly quickly. He suggested the Council pass a resolution before the end of May that they want the comp plan reviewed and set out parameters to do that.

Councilor Cahan said a community member raised a concern that accessory dwelling units could be used improperly to get around the dual family dwellings. Councilor King said the goal of the ADU was to create a diversity of housing; it is designed to be secondary to the primary dwelling but is not regulated in terms of use.

The Council directed that LPAC review the proposal on two- and multi-family dwellings being made conditional uses in RB and RD and their associated dimensional standards.

Councilor Kuhn felt they need to address the structure of how they do the work before they move forward with the zoning review.

The Council discussed whether this should go to LPAC+ or just to LPAC, whether this was a continuation of their previous charge to work on growth and density or not. Councilor Cahan supported sending it to LPAC+; the Council agreed.

Councilor Cahan withdrew her introduction of the ordinance amendment.

Item 20 Order to authorize the Town Manager to issue a Request for Qualifications (RFQ) for a person or team of persons to perform a feasibility study for building moving, renovation, and/or redevelopment or adaptive reuse services for the Tidewater Farmhouse and Barn structures located in the Tidewater Master Planned Development District.

Mr. Poore said the RFQ is for someone to partner with the Town on this project. The Council has expressed that they want TF-2 to be accessible for public use and so they had previously expressed the desire for the buildings to be moved, possibly to TF-3. They wanted to leave open the possibility for creative ideas and proposals. They may find that no one is interested and go back to the original plan. This proposal was sent to Maine Preservation; they have suggested adding a phrase that states that any rehabilitation should be done in accordance with Secretary of Interior standards for rehabilitation. He would add that phrase as a preference and not a mandate.

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

Councilor Ferrante asked who would evaluate any proposals that come in. Mr. Poore said he would review them along with staff and send them to Council for final approval.

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

Item 21 Discussion of a request to record committee meetings.

Mr. Poore said current practice is to do live broadcasts of Council, School Board and Planning Board. They video record Zoning Board, Board of Assessment Review, and Board of Sewer Appeals. All these are also rebroadcast later. There have been requests lately to record LPAC meetings due to the policy discussions and staff have done several audio recordings and one video. There is a lack of staffing and equipment to do more than that at this time.

Councilor Kuhn said meetings that are not recorded have agendas posted and minutes recorded. They are also open to the public. Mr. Poore confirmed that.

Mr. Poore said the video recording is expensive and they have had trouble with staffing.

Councilor Ferrante asked how many people have made this request. Mr. Poore said he thought he has received 6 emails or so and he thought the request was for all committees.

Councilor Ferrante said audio would be less expensive, but it would include more staff time to catalog and upload them.

Mike McDade, Cable TV operator, said the first LPAC meeting they recorded was uploaded to the website. They have not uploaded the audio recordings. Audio is a lot easier to do, but with one device in the middle of the room, there is no guarantee that all voices will be captured. If they want to go that route, they would need a more elaborate set up. He said it is difficult to get staff for a part-time position.

Councilor King wondered why they would consider this and whether is the goal to make their meetings more accessible. She found it more efficient to read minutes; listening to a whole audio is time-consuming but other people might find an audio recording more accessible.

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Chair Hemphill felt it was enhancing the public record and there are nuances that the audio would have that the minutes might not. This would allow people to experience the meetings without having to attend.

Councilor Cahan would like staff to do a cost analysis; she wanted them to be open and transparent but there is also a fiscal responsibility.

Mr. Poore said he would need to know which committees they would want to record and how before he can do an analysis.

The Council discussed the options and details with Mr. McDade.

Councilor Svedlow said he understood the accessibility situation, but he didn't think there was a demand to record all the advisory committees other than LPAC. He felt the Town does a good job of broadcasting the decision-making bodies of the town. This was a discreet request from a few individuals. If there was a specific request due to accessibility issues, that can be addressed.

Chair Hemphill agreed. If there is a specific policy discussion that warrants it, they can record them.

Councilor Ferrante agreed with Councilor Svedlow; she didn't think they should be recording committee meetings unless there is a specific issue like the growth and density discussion. She wanted them to spend their time and attention making sure the public knows what they are doing.

The Council agreed that they didn't need to change current policy. Audio recording can be done if there is a clear accessibility issue. Councilor Asherman pointed out that any member of the public can come and record a meeting. Mr. Poore agreed and said if they sent him the recording it would become a public record.

The Council further clarified that audio recording outside an accessibility issue should be at the direction of Council leadership. They will discuss it further at the workplan retreat.

Adjourn

Councilor Asherman moved to adjourn; Councilor Svedlow seconded. Motion carried 7-0.

The meeting adjourned at 10:18 pm.

Respectfully submitted,

Melissa Tryon

Recording Secretary