

# **Town Council Meeting Minutes January 11, 2021**

Chair Kuhn began the meeting at 7:00pm.

## **Roll Call**

All Councilors were present and answering roll call.

## **Item 1      Update on the Community Vision and Values project.**

Councilor Trickett said that more than 1,000 people had completed the Community Survey. He said that that number was nearing the total number of responses received to the 2013 comprehensive plan survey. He said that the deadline to complete the survey was the end of the month. He described the efforts of the community connectors. Chair Kuhn added that the survey is the first item in a months long process.

Chair Kuhn opened the public comment period.

Lisa Joy said several residents have asked if the survey can be kept open after the current deadline so that people can continue to submit surveys after the project has moved on to the next phase. Councilor Trickett said Ms. Joy is one of the community connectors.

Chair Kuhn closed the public comment period.

## **Item 2      Update on the townwide property revaluation project.**

Mr. Poore said Ben Thompson of the Cumberland County Assessing Program and Patrick Donovan of Vision Government Solutions were present at the meeting. He said that the revaluation project would launch in the next few weeks with exterior inspections. He said the appraisers would be starting in the northwest corner of the community near the Cumberland and Windham line and then starting to work on the east side of town. He said staff have developed a revaluation project webpage that will continuously be updated with information on the project. He said there was a revised revaluation schedule. He said residents would be sent out to residents in the area where external inspections will commence. He said the Police Department is aware of what is going on in case anyone suspects suspicious activity.

Chair Kuhn asked if the FAQ sheet would be distributed through the Town's communications platforms in addition to the Focus. Erin Cadigan, Education & Outreach Coordinator, said yes. The FAQ sheet is on the Town website as well.

## **Item 3      Land Management and Acquisitions Committee (LMAC) update.**

Chris Kittredge, Vice Chair of the Land Management and Acquisitions Committee (LMAC), and Amanda Stearns, Open Space Manager provided the update. Ms. Stearns said that the Council directed LMAC and staff to implement the Open Space Plan. She reviewed the priority items for FY19 and FY20. She described successes that had occurred over the last year. She said that the Committee members have begun doing field days at each of the conservation areas. She said the Open Space Program has a wonderful group of volunteers. She said two eagle scout projects were completed. She said there is great support from the biking community. She described the Committee's response to the pandemic. She said that Caleb Hemphill had been hired as the new part time Property Steward and Outreach Coordinator. She said that Mr. Hemphill has resigned from LMAC so there will be a vacancy on the Committee.

Councilor Asherman said this is a hard-working Committee and that there had been tremendous use of the Town's open space over the last year. He said that it is becoming a management challenge to keeping up with that use. He commended staff and the Committee for working very diligently on this.

Councilor DeLima thanked the Committee and all the volunteers. She said that the ability to use the trails was a welcome relief for residents during these tough times.

Ms. Stearns said that the Parks & Community Programs Department had added a new program called SOAR, Senior Outdoor Adventures in Recreation, which was a series of walks at various conservation areas from 10:00am-12:00pm on the second and fourth Thursdays of the month. The first walk would be that week at Riverpoint and the program would continue at least thru April.

**Item 4                      Council discussion on Land Management and Acquisitions Committee recommendation for adoption of Code of Ordinance amendments regarding electric bicycles.**

Councilor Asherman said over the last several years there has been a proliferation of e-bike use across town. He said the Town's ordinances currently prohibit motorized vehicles on town property, yet they are being used. He said the State amended their statutes in 2019. He said over the past year LMAC has been considering how the Town might respond to this proliferation of e-bikes.

Amanda Stearns, Open Space Manager, said e-bikes are electric bicycles. They come in different kinds. She said this is a topic that is being addressed all over the world. She said the State statute address three different kinds of e-bikes and each are regulated somewhat differently. She said LMAC's recommendation focuses on class 1 e-bikes or pedal assist only bikes in which the electric motor only engages when the rider is pedaling the bike. There is no throttle. She said the motor will cease to provide assistance once the rider reaches 20 miles per hour. She said it is very rare that anyone would be riding the trails at that speed except in some downhill sections where expert riders can reach those speeds. She said the average speed of a cyclist on the Town's trails is well less than ten miles an hour. She said class 2 e-bikes allow for a throttle but can only go 20 miles per hour. She said class 3 e-bikes are pedal assist but can reach speeds of up to 28 miles per hour. She said when the State passed the statute it indicated that e-bikes may not be operated on bike paths designated for non-motorized traffic is significant portions of that are of a natural surface unless the municipality has provided for them to be used. She said technically speaking class 1 electric bikes are not allowed on any town trails. She said it is difficult to notice the difference between e-bikes and analog bikes. She said the Town has had no complaints about excess speed due to electric bikes. She said LMAC recommended clarifying under the Code of Ordinances that class 1 electric bikes are allowed on local streets and are treated the same as bicycles as opposed to motorized vehicles. She said LMAC also recommended clarifying that class 1 e-bikes are permitted on the Town's multi-use trails. She said LMAC wanted to promote diversity for opportunity for access to open space. Additionally, LMAC recommended adopting the state definition so that the way the Town addresses class 1 e-bikes is concurrent with how the State defines them.

Councilor DeLima asked for clarification that the Town was currently treating class 1 e-bikes as motor vehicles as opposed to bicycles. Ms. Stearns said that under the Code of Ordinances they would be defined as a motorized vehicle but the Town is not enforcing that. Councilor DeLima asked about the benefit of amending the ordinance if the Town was not enforcing the current ordinance. Ms. Stearns said that the Town currently is not technically complying with the State statute and would like to clarify that class 1 e-bikes are currently allowed. She said it would also be taking local authority over the situation. Councilor Asherman added that it also clarifies that the recommendation is for class 1 e-bikes only and that class 2 and 3 e-bikes are prohibited. Councilor DeLima asked expressed concern about the ability to enforce the amended ordinance. Ms. Stearns felt amending the ordinance would give the Town the foundation to pursue a violation if needed. Councilor DeLima asked if staff had consulted with neighboring towns. Ms. Stearns said she

reached out to all the neighboring towns as well as Land Trusts. No one else has tackled the issue so Falmouth would be the first.

Councilor Cahan asked how the Town would help people and the Police Department understand the differences between the classes of e-bikes and how to identify which class they have. Chair Kuhn asked why class 2 bikes were not also permitted. Councilor Asherman said class 2 e-bikes do not require pedal assist so it would be like having motorbikes on the trails. He said class 3 e-bikes have a throttle but also pedal assist and reach higher speeds. He said the notion is to draw that line so that there is not a proliferation of motorbike type bikes. He said currently, most of the e-bikes that are out there are class 1. He said that the amended state statutes require the bikes to be labeled as such by the distributor in Maine. Ms. Stearns said she had confirmed that. Ms. Stearns said that LMAC recognizes that there are challenges with passing the ordinance and if the Council is reticent to move in this direction the Committee could consider an educational effort but that the education would be that e-bikes cannot be used at all on the trails system. Councilor Cahan said she was supportive of the Town allowing the use of electric bikes but was not sure why the Town would not allow class 1 and class 2 e-bikes to be consistent with the State and because they are the same speed cap.

Councilor LaFond asked for clarification on the differences between the three types of e-bikes. Ms. Stearns said all electric bikes have pedals but that on class 2 bikes the throttle will work without pedaling.

Councilor DeLima expressed concern about the value of Falmouth having an ordinance when the neighboring towns do not have ordinances in place. She said she was supportive of increased education.

Councilor Cahan expressed concern about liability issues that could arise if the Town did not amend the ordinance.

Councilor Johnson said Falmouth is a leader with its trail system and he would like for the Town to be a leader with this. He suggested making the ordinance language inclusive of all the existing types of motorized vehicles including scooters and writing it in a way that would allow it to evolve as new products come on the market.

Councilor Asherman said unless the surrounding towns had adopted ordinances e-bikes were not prohibited in those towns under state law. He said because Falmouth has been a leader in the mountain biking community and open space a lot of the surrounding communities are looking to the Town to take the first step. He said currently the ordinance prohibits all motorized vehicles and the recommendation is to make an exception only for class 1 bicycles. He said class 1 e-bikes provide access for older individuals and individuals with health issues. He said it was important to him not to have motorized vehicles on the open space.

Councilor Trickett asked for clarification that e-bikes are not permitted on trails under the state statute unless municipalities opt in. Ms. Stearns said that was correct. He said currently if surrounding towns do not opt in e-bikes are prohibited on their trails as well. He said it was illegal for people under 16 to operate class 2 or 3 e-bikes. He said he did not hear enough from the LMAC report in terms of anticipated outcomes in terms of use. He asked LMAC to provide additional information. Councilor Asherman said people are already using e-bikes on the trails. He suggested asking bicycle distributors to do a demo for the Council and answer questions about use.

Councilor Cahan was interested in pursuing this further and learning more about it. Ms. Stearns said there are signs at most of our trailheads indicating that motorized vehicles are not allowed but the Town does not patrol the trails.

Chair Kuhn said she was hearing that the councilors were open to learning more about this issue but were not yet ready to move forward with an introduction at this time. She said one issue seemed to be whether it was necessary or advisable to have an ordinance like this. She suggested getting feedback from the biking community. She suggested looking at other communities' ordinances. Ms. Stearns described different ordinances that she had looked at. She said the biking community is aware of this issue and were trying to be proactive in asking the Town to consider clarifying what is allowed in Falmouth. She said she could ask the biking community for a more formal statement.

Councilor Trickett did not feel he had heard enough to understand the consequences but felt that the Council should make a policy decision.

Councilor DeLima agreed with Councilor Trickett's comments. She wanted more information including how the ordinance would be enforced.

Councilor Johnson wanted to know what other areas in Maine are doing as well as similar communities to Falmouth.

**Item 5            Adoption of ordinance amendments to Section 19-40 of the Code of Ordinances relative to the keeping of animals in the RD and HL zoning districts.**

Councilor Cahan provide background information on the proposed ordinance amendments.

Councilor Cahan motioned; Councilor Johnson seconded.

The motion carried unanimously.

**Item 6            Mid-year FY21 Town Budget Update.**

Pete McHugh, Finance Director, delivered the presentation. He reviewed FY21 year to date revenue. He reviewed FY21 year to date operating expenses. He described the FY21 COVID-19 grants. He described other issues including several unbudgeted expense items and the recreation special revenue fund revenues continuing to be impacted by the pandemic. He said, in summary, based on the Town's mid-year results FY21 revenues and 2<sup>nd</sup> half revenue estimates, revenues will be on budget for the year. He said the current favorable expense pacing of almost \$700,000, should be enough to cover normal and known unexpected items for the remainder of the year. He said Falmouth Schools are on pace to receive all budgeted State Aid for Education. He also said there is uncertainty about continued Federal grant COVID-19 related support with ended in December 2020.

Councilor Trickett asked if there was a definitive date for when construction would begin on the solar array on the landfill. Nathan Poore, Town Manager, said the project was in the permitting phase and the contractor was not able meet the deadline to get on to the Planning Board agenda so they are another month behind on that but are still anticipating construction to start and be completed this spring.

**Item 7            Order to accept Seaside Way as a public street.**

Lisa Magnacca, Town Attorney, said the homeowner's association has proposed a deed to the Town for the road and has also proposed the fifteen-foot-wide easements along the side of the road. She said that the Town has easements from each lot owner to the Town. She said typically if there are mortgages on properties the Town will get the banks holding the mortgages to consent to the easements in the event of foreclosure. She said five of the eight Seaside Way lots have mortgages. She said although the Town has easements from

the lot owners the Town does not yet have the consent of the mortgage holders. She said there was a timing issue and a risk that if the Town were to wait until it obtained consent from the mortgage holders there would likely be changes in ownership and people refinancing in the meantime. She said because the easements represent a change to the subdivision plan the applicants were required to go before the Planning Board and get an amended subdivision plan approved showing the easements. She said the applicants have an approved subdivision plan that is being held pending the outcome of the Council's decision and will expire if not recorded within 90 days. She said the risk to the town of proceeding is that in the event of a foreclosure the lender had the option to extinguish and foreclose the Town's easement but that it is a remote risk as the Town would be notified as a party to the foreclosure at which time the Town could justify that these are easements that are necessary for the maintenance of the road. She said that the lender could also choose not to name the Town as a party to the foreclosure at which point the easement would survive.

Councilor Trickett asked about the ordinance requirement for staff to submit reports. He asked if those reports had been created and if they could be made available. Justin Early, Town Engineer, said that he was not aware of any reports, but the former Public Works Director had circulated the application and staff had provided review and response and had signed off on the review. Mr. Poore said staff could go back to the record and see if anything formal was submitted. Mr. Early said that he had emails from summer 2019 from the Fire and Police Chiefs. Councilor LaFond asked if the ordinance required that the reports be in writing or if email was sufficient. Councilor Trickett read the ordinance language.

Councilor DeLima asked for clarification on the Planning Board approval expiration. Ms. Magnacca said it was 90 days from the date that the plan was approved which was in December. She was leaning towards waiting until all of the mortgage lenders had consented.

Councilor Asherman asked if there was a way to approve the application contingent on the signoffs from the lenders. Ms. Magnacca said there is case law that prohibits towns from conditionally accepting streets.

Chair Kuhn opened the public comment period.

Bob Kline said Jay Reynolds, Former Public Works Director, sent a letter to the Homeowner's Association in September 2019 which included the responses from the various departments. He said he had forwarded the letter to Justin Early, Town Engineer. He said he would shepherd the process through to make sure that the consents were provided by the mortgage lenders. He said there was no change between the easements that already exist and the easements that the Town has asked for.

Chair Kuhn closed the public comment period.

Chair Kuhn asked whether the letter Mr. Kline referenced was attached to a prior Council agenda. Mr. Early said he did not believe so.

Councilor Cahan said she was ready to move forward if Mr. Early felt that the staff responses met the criteria.

Councilor Asherman expressed concern that the applicants would not be motivated to obtain the mortgage lenders' consent if the Council went ahead and approved the application. He asked whether the easements held by the homeowner's association remained in place if the mortgage lenders did not provide consent. Ms. Magnacca said that if the Council voted to accept the street the Town would obtain a deed from the homeowner's association for the roadway and then obtain separate easements from each of the lot owners for easements along the side of the road and would record a subdivision plan showing the easements, the deed to the Town for the street and the easements from the lot owners. She said not having the lender consent would

not hold up anything and would not invalidate the easements. The easements are valid until a situation in which a lender chooses to extinguish the easement during a foreclosure.

Councilor LaFond said the Town would be taking the risk by going ahead and accepting the street without the mortgage lenders' consent but the applicants would not be taking a risk. Ms. Magnacca said that was correct. She reiterated the concern that an owner could refinance, or ownership could change while waiting for all the mortgage lenders to consent. He expressed concern about these easements being extinguished by the will of a particular attorney in foreclosure. Ms. Magnacca said that the fifteen-foot easement areas do already exist, but the Town wanted to confirm that it was getting the easements that it needed.

Councilor Johnson expressed concern that consent from all the mortgage lenders would never be obtained.

Councilor DeLima suggested recording all the easements as they are but also having side agreement with the homeowners that the Town would not officially take on maintaining the roads until the mortgage lender consent is received. Ms. Magnacca said that was not possible. She said the only other option was that if the property owners conveyed the easements to the homeowner's association those could be recorded that day. Councilor Asherman liked the potential scenario of transferring the easements to the homeowner's association. He asked about sticking to the wording that is already there rather than the exact wording that the Town requested. Ms. Magnacca said there was no explanation of what was included in the term grading and utilities listed on the subdivision plan.

Bob Kline said that the applicants initially suggested that the original homeowner's association easements were sufficient. He said the easements were recorded on the amended plan that had been approved by the Planning Board. He said that he was motivated to see through getting the mortgage lenders to provide consent. He felt that the process was becoming prohibitive. He felt that the applicants had demonstrated public benefit.

Chair Kuhn said she understood Mr. Kline's frustration, but the Council had been advised by the Town Attorney that the current easement language was not sufficient to cover all the uses for which the Town wants to have confirmed access. She added that there was nothing in it for the Town in this. She said part of the process was making sure that the Town has done its due diligence.

Councilor Trickett agreed with Chair Kuhn's comments. He said the ordinance requires the Council to find a public benefit. He said it is important to get the easement language right in perpetuity.

Chair Kuhn said she was hearing that most of the Council was not ready to move forward at that meeting and wanted to allow additional time for some of the additional items to be worked through. She said she was open to hearing the matter again before the Planning Board approval expires if the outstanding items are resolved. Councilor Asherman agreed with Chair Kuhn's suggestion. Councilor Johnson was amenable to moving forward on that basis but expressed a desire to review the ordinance and application process. Chair Kuhn agreed that the street acceptance process has been frustrating. She said she would support a moratorium after the pending applications are finished. Councilor DeLima agreed that the ordinance should be reviewed. Councilor Trickett suggested included a review of the ordinance and policy at the mid-year work plan retreat workshop.

Councilor Asherman said the situation with the easements is a unique circumstance.

Mr. Poore said that the Mr. Reynold's September 2019 letter to the applications does include the staff response. He said there are similar remaining items with the other street acceptance applications. He said that the same message, that all the items needed to be finalized before the applications came back before the

Council, needed to be conveyed to the other applications. Chair Kuhn agreed but said that she understood the applicants' perspective of not wanting to put in all the time and money without any guarantee that the applications would be moved forward. Mr. Poore asked if the Council would be willing to take a straw poll on the other applications. Chair Kuhn said the Council needs to first meet to get on the same page. Councilor Trickett agreed. Councilor LaFond said he was willing to accept that the staff letters and emails complied with the ordinance requirement. He was opposed to having an outstanding issue concerning the easements that would prevent the Town from plowing the road.

Councilor DeLima felt that the best thing the Council could do for the applicants would be to create an expectation that this is not a one and done thing. Councilor Johnson disagreed. He felt that the Council could make an application checklist and that the Council needed to review the street acceptance application process.

Ms. Magnacca said that the easements have been an issue during the entire application process. Mr. Kline said the applicants were aware of the easement issue from the beginning but were not aware of the Town's need for separate easements until recently. He asked if there was still support to move the application forward if the mortgage lender consent was obtained.

Ben Metivier of 10 Seaside Way said it felt like the rules were changing. He felt that the applicants had done everything correctly up until that point and things were different.

Chair Kuhn said her understanding was that the applicants were advised that they might have to come back before the Council after the easements issue was resolved. She said that the Council could not guarantee future approval. Councilor Johnson said the Council needed to identify potential last-minute hurdles and either remove them or address them. He felt that the Council should decide on the pending applications before moving forward.

Mr. Kline argued that the Council should take a straw poll out of fairness.

Councilor Cahan agreed that the Council needed to work on the street acceptance ordinance. She said that the Ordinance Committee had begun reviewing it. She said she wanted to make sure that the Council would not be holding up applications were far down the line. She felt that the Council could move forward with this application once the additional items were resolved.

Councilor Trickett said he was unwilling to commit to a position on the application at that point.

Chair Kuhn suggested scheduling a workshop for the Council to review the street acceptance questions more broadly. She said she and Mr. Poore could work on getting this application back on an upcoming Council agenda in advance of the Planning Board approval expiration.

## **Adjourn**

Councilor DeLima motioned; Councilor Cahan seconded.

The motion carried unanimously.

The meeting adjourned at 10:13pm.

Respectfully submitted,

Marguerite Fleming  
Recording Secretary