

# **Town Council Meeting Minutes August 24, 2020**

Chair Kuhn began the meeting at 7:00 pm.

## **Roll Call**

All Councilors were present and answering roll call.

## **Pledge of Allegiance**

Chair Kuhn led those present in the Pledge of Allegiance.

## **Item 1           Public Comment Period.**

Lee Hanchett of 21 Stone Ridge Road asked when the welfare of Falmouth residents will matter more than a developer's demands to the Council and staff. He said that Homestead Farms and its developer are a good example of how Falmouth will sacrifice anything and anyone to achieve its growth aspirations. He felt that ordinances mean nothing if they conflict with a developer's wishes. He said that the burden of proof was placed on those least capable of defending themselves. He said that the fate of a 100-year-old maple tree lies with the Town Manager and suggested that the tree would not have been removed if it was meaningful to the Council or Town Manager. He asked how a new tree could replace the large tree and its canopy. He described how Homestead Farms has adversely impacted Julie Porter on three of the four sides of her property. He felt that in Falmouth charity was reserved for developers and the new people that they might bring to the town.

Valentine Sheldon of Route 88 felt that the Council was not representing all Falmouth residents and was not serving as a check and balance to the Town Manager regarding the Homestead Acres development. He said that the Council has ultimate control over the Planning Board as it appoints the members and can remove the members. He expressed concern about a recent appointment being a former town employee and the new road, Blue Bird Trail being dangerous. He expressed concern that the reduced sightline distance granted by the Planning Board is dangerous and that the Town's expert did not visit the site. He expressed concern that the Planning Board did not approve a variance to the ordinance. He expressed concern about dust mitigation at the site. He expressed concern that the Council had not responded to emails from residents.

John Winslow of 253 Gray Road expressed concern about the Town hiring an Executive Assistant for the Town Manager's office. He expressed concern about why the School Budget Validation numbers were not posted in the voting booths or printed on the ballot. He felt it was more important than ever to inform the voters of information. He expressed concern about the sight distance for the entrance to Homestead Farms. He said that the entrance will be used to serve 68 single family homes, is off Mountain Road where there is no shoulder or sidewalk and is the location of the school bus stop. He felt that the Town Attorney's opinion went against the Town's Land Use ordinance. He expressed concern that an engineering handbook was never produced. He felt that there needed to be more oversight of the Town Attorney. He said that the Council needed to review growth and residential density in the RB, RC, and RD zones and the revaluation needs to be put on track. He also asked what was being done about the erosion on the west branch of the Piscataqua River. He expressed concern about the Maine State Statute used to justify the Executive Session on the agenda.

Scott Walker of 8 Rogers Trail felt that the Town has lost oversight over the Homestead Acres project since it has been approved. He agreed with Mr. Hanchett's comments regarding dust control. He said there is very little erosion control. He asked how many officials had visited the site. He expressed concern about the

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number of building permits that the Town had already issued this year and that the only building going on would be in Homestead Acres.

Stephen Dyer of 16 Mountain Road agreed with the prior speakers' comments. He felt that there are no checks and balances going on with the development. He said residents see huge clouds of dust coming from the contract zone. He said that his daughter could not use their yard and their cars are covered in dirt. He said that he spoke with the developer and the developer said he could not do anything. He expressed concern about smoke. He expressed concern about residents having to monitor what is going on. He expressed concern about the noise and 7am-7pm, 6 days a week work hours.

Krisztina Napolitano of 34 Woodlands Drive expressed concern about the building of a new sewer line through the Woodlands and the possibility that the Town could sue for eminent domain.

Linda Dyer of 16 Mountain Road also expressed concern about the Homestead Acres project. She felt that Julie Porter has been bullied. She felt that residents had been lied to. She expressed concern about the clearing of the property.

Keith Noyes of 94 Gray Road expressed concern about the final approval process for Homestead Acres and the sightline. He also expressed concern about the tree on Julie Porter's property.

Meredith and Eric Schwert agreed with the prior speakers' concerns. They said that residents of Gray Road had been dealing with the Route 100 construction for two years. They shared concerns about noise, dust, and traffic. They said that they had been hopeful to be able to ride bikes from their house to Hannaford but were concerned about the traffic from the development. They asked for an update on where things are in the process.

Chair Kuhn said that the Town received a large volume of emails on this matter and she saw things on social media. She said that she wanted to make sure that the Town was getting good accurate information out. She said the Council has asked staff to provide a report to the community on what is this project, what is the status of it, and maybe dig into a couple of issues that residents are struggling with.

Nathan Poore, Town Manager, said the nuisance issues had evolved recently. He said that Mr. Hanchett reached out to him the prior week about the dust and that was the first he had heard about it. Mr. Poore said the Planning and Code Enforcement Department reached out to the developer who started to deploy dust control. He said he was hearing about noise for the first time that evening. He said to follow up on this he would meet with staff and look at the Town's ordinances. He said that the ordinances for noise and time of construction, are not that strong. He said there is a lot of leeway allowed so there is not much that staff can do about that. He would like to sit down with staff and maybe put a plan together about how staff might be able to work with the developer and the neighborhood to make it a little more tolerable. He said the Town has replied to a lot of the comments about sight distance and the tree already. He said the Planning Board did approve the project with conditions of approval and the Planning Board applied a sight distance standard that is utilized by MaineDOT. He said he had read through the ordinance with staff and had read through the ordinance with the Town Attorney and it is very clear to everyone that the Planning Board did have the ability to deploy any standard that they wanted to. He did not know who recommended the DOT standard, he did not dig back that far into the Planning Board record on this. He said that they had a condition of approval of 325 feet which is 20 feet greater than the DOT standard for posted speed in this area. He said that the field measurement that was confirmed by the developer's engineer and that Town staff, multiple Town staff, the Town in-house staff engineer, and the Town's consulting engineer were all on site when the measurements were taken. He said they are going to be able to get 370 feet. He said there are some state laws associated with when there are shade trees in an area that the Town does not have the authority to allow the

trees to be removed but that law is not applicable in this case. The Town has not designated any trees in that area and primarily relies on a different statute. He said the Town is going to allow the tree to be removed as there has been some damage to the tree. He said that removing the tree will create more sight distance. He had reached out to the property owner to find out if she would like for a new tree to be planted on her property. He said that he recently learned that the sight distance standard being used for this development includes the distance required to allow a vehicle entering the highway to reach 85% of its posted speed limit without being overtaken by a vehicle traveling at the posted speed limit and approaching the entering vehicle from behind. He said with the 370 feet that they reached based on the manuals, the DOT, our traffic engineers, our staff, there really is not any concern about safety for the design of this intersection where it is. The Police Chief is going to start putting some details on Mountain Road and start measuring speed. He said this development and another development that was approved down the road from it are supported by the comprehensive plan as this is considered a designated growth area in town. He said the sewer is being expanded for capacity because there are capacity needs right now. He said while he did not think anything can be done about the Planning Board approval for Homestead Acres or to reverse or stop what is happening, he thought we could put controls in place around the construction activity. He said there was a threat of a lawsuit which is why in one of his last emails he mentioned that it will become more difficult for him to respond and he may have to use the attorney more if there is a threat of a lawsuit. He said the Town is not hiring an executive assistant. He said the Woodlands matter is part of a longer-range plan that was established in baseline with the comprehensive plan and then the West Falmouth Master Sewer Plan which started several years ago. He said the Town looked at six alternative routes and the Woodlands route it is being selected because it is the least expensive. He said the Town believes that it has the property rights to go through the private road and is currently working with the homeowner's association. He said it is true that the Town is also getting the road appraised.

Chair Kuhn encouraged all residents to subscribe to the Falmouth Focus, the bi-monthly e-newsletter. She said the Focus includes a preview of what is going on at the Planning Board. She said residents could go to [falmouthme.org/subscribe](http://falmouthme.org/subscribe). She said under the Town Charter, in implementing ordinances, the Council is prohibited from weighing in on the content of Planning Board decisions. She said the reason for that is to insulate the Planning Board, which is what is called a quasi-judicial body, from political pressure on its decisions. She said the Council does have the authority under the Charter and the ordinances to appoint and remove Planning Board members, but it is in the context of a Planning Board member committing misfeasance, malfeasance, and nonfeasance and none of those things happened in this case. She said the Council spent considerable time with staff, with consultants, with the Town Attorney to ensure that the Planning Board's decisions were made in accordance with State and local law. She said the Council does have authority to monitor the staff's implementation of the Planning Board's decision and to consider changes to ordinance. She suggested that the Community Development Committee could take a look at the noise and dust ordinances and see if there is something that could be done to make this situation more livable for this project and for other projects in the future.

Councilor Cahan requested that the dust and noise ordinance come either to the Ordinance Committee or the Community Development Committee. She was not aware that it was so flexible and potentially lenient and those are two really important issues for quality of life as well as environmental issues such as air quality and impacts to animals. She would like the Council to be able to evaluate that to see if there are opportunities to make that better for the community as well as the environment. She said that she heard some concerns about potential speeding and kids getting picked up for the bus. She asked if patrol could be increased during the bus pick-up time if that is an area where kids are being picked up by the bus.

Councilor Trickett wanted to address the one factual misstatement directed to him. He said as far as he knew he had never received an email directed to him from Valentine Sheldon or anyone else regarding Homestead Acres. He said he had received dozens of emails where he was copied, as had the rest of the Council, on

messages directed to Town staff. He said no one has ever addressed him about any issue or asked anything from him with respect to Homestead Acres and that includes developers. He said he has never spoken with any developer associated with Homestead Acres. He did not think he had ever met the developer of Homestead Acres or have ever taken any position on Homestead Acres. He said that we want the Planning Board to be insulated from political pressure.

Councilor De Lima said clearly there has been a lot of feedback against this project from the community particularly the neighbors surrounding this project. She felt what she heard today was now that we are in construction to the extent that there are inconveniences, disturbances, dust, and those sorts of things to call it to the Town Manager's attention and there might be some way for us to approach the developer to work it out. She said it is never pleasant to have a big construction project next door to anyone but to the extent that Town staff can be helpful she knows they will. She said Mr. Poore talked about a couple of places where he had not heard about the dust and noise and he will make an appeal to the developer to fix it. She echoed Councilors Kuhn and Cahan's comments that perhaps there is something the Council can do around the ordinances to mitigate and bring down those inconveniences. She appreciated hearing from Mr. Poore on some of the points that were brought up today. She said it was important to get the facts out and to have the Council look at it. She said for the neighbors to please feel free to reach out to the Town and that staff have always been very responsive in terms of getting in touch with the parties to see what the Town can do to mitigate inconveniences.

Councilor LaFond agreed with other councilors' and Mr. Poore's comments about the efforts of the Town to listen to and to hear and consider the citizens' complaints about the process involving the sight line at this development and other issues they have raised. He said the Town seems to be responding to these concerns as best they can within the limits of their ability to respond.

Chair Kuhn said next steps for the Council on this matter would be to consider ordinance amendment to make the livability of this project and future projects better around the nuisance issues. She said this would go to the Ordinance Committee and asked that the Committee come back to the Council and give a report on what it finds.

**Item 2 (Consent Agenda)**

- **Order to approve the minutes of the July 20, 2020 Town Council Annual Caucus.**
- **Order to approve the minutes of the July 20, 2020 Town Council Meeting.**
- **Order to approve the minutes of the August 10, 2020 Town Council Special Meeting.**

Councilor Johnson motioned; Councilor Cahan seconded.

Chair Kuhn opened the public comment period; there was no public comment.

The motioned carried unanimously.

**Item 3 Report from staff, Council committees, and Council liaisons regarding updates on assignments and projects.**

Councilor Johnson said that the Appointments Committee will be interviewing seven of fourteen applicants for board and committee membership.

Chair Kuhn said that the Town had reached out to the School Department to see what it can do to help the School Department reopen safely and on time. She said any specific requests are made those requests would come before the Council at a public meeting. Chair Kuhn said the Senior Tax Assistance Program is now open and applications are due by October 8. She said information on the upcoming election in the Falmouth

Focus. She said absentee ballots are expected to be available on October 5. She said that the second Route 88 Intersections public forum will be held on September 23 at 7:00pm via zoom.

Chair Kuhn said that some residents had reached out regarding the use of plastic bags verses reusable bags at the grocery stores. She said that plastic bags were supposed to become banned statewide last spring through state law, but that ban was deferred due to the pandemic. She said some residents are concerned that as the pandemic continues, we are becoming increasing reliant on plastic bags to the detriment of the environment. She said that the statewide ban has been deferred until January and in the meantime guidance from the CDC is that the use of reusable bags is permitted but the organization is not advocating for their use. She said it was up to the discretion of the store manager what they would allow. She suggested leaving the matter where it stands right now and await further guidance from the state. Councilor Cahan said she understood having something that is not a reusable bag as an option but did not understand why it had to be plastic verses paper. She was not supportive of allowing plastic. Councilor De Lima felt it was up to the consumer as they have the option of asking for paper. Chair Kuhn suggested providing an update to residents in the Falmouth Focus on which stores are allowing which policies. Councilor LaFond suggested that consumers ask cashiers to put the items back in their carts and then use reusable bags to bag them at their cars. He agreed with Councilor Cahan that the use of paper bags should be encouraged over plastic. Councilor Trickett asked for clarification that the Town was not currently enforcing the ordinance requiring charging for plastic bags. Chair Kuhn said that was correct. Councilor Trickett said he did not understand why the default is plastic bags and was less moved by the argument that the Town should not be enforcing the plastic bag fee ordinance. He felt that the Town re-enforcing its ordinance might encourage stores to allow customers to use reusable bags. He agreed that paper bags without handles are inconvenient. He preferred re-enforcing the existing ordinance. Councilor Cahan agreed with re-enforcing the existing ordinance. Chair Kuhn suggested that the Ordinance Committee bring a proposal to an upcoming Council meeting for public comment. The Councilors agreed.

**Item 4           Public hearing and order relative to the renewal of a permanent food service establishment licenses for Circle K, The Moose, Nouria Energy Retail, and the Portland Country Club Pool and Clubhouse.**

Councilor Trickett recused himself from voting because he is a member of the Portland Country Club.

Councilor Asherman motioned; Councilor Johnson seconded.

Chair Kuhn opened the public comment period; there was no public comment.

The motion carried unanimously.

**Item 5           Order to certify the July 14, 2020 Election results.**

Councilor DeLima asked about the number of blanks on the election results. Ellen Planer, Town Clerk, said in the Council race each voter had two options so it is a double total. She said the same situation occurred for the School Board with three candidates. She said there were a lot of blanks; not filled in bubbles. Councilor De Lima asked for clarification that for every voter if they only checked on box it was counted twice because they had two options; we did not have 7,000 voters. Ms. Planer said that is correct, voters could vote on that one question three times. 3,858 people voted. She said in the first race for Council they could have two choices so that means the possible number of votes for that race would have been 7,716. Adding those totals together will equal 7,716 for the Town Council. She said for the School Board race the total would have been 11,574

Councilor Johnson motioned; Councilor Cahan seconded.

Chair Kuhn opened the public comment period; there was no public comment.

The motion carried unanimously.

**Item 6            Resolution to elect to participate in the MMA Workers' Compensation Safety Incentive Program**

Amy Lamontagne, Assistant Town Manager, said the Town has participated in the Maine Municipal Association's Leader Program for many years. She said the Town has a lot of risk management that is handled MMA. In the Leader Program, if you hit your marks including having a safety committee that met regularly you could get points that would translate into money. She said the Town would receive dividends every year ranging from \$10,000 to \$20,000 or more. She said MMA has been looking at how to streamline the program and change the dividend process. She said the new program, the Workers' Compensation Safety Incentive Program, will become effective on January 1, 2021. She said the Town wants to continue participating and is committed to having a safe workplace. She asked the Council to approve the resolution, put together by MMA. She said all communities in Maine that are participating in this program will be adopting the same resolution. It needs to be adopted before October 1.

Councilor Johnson read the resolution into the record.

Councilor Asherman asked if the Town anticipated incurring any additional work or cost to comply with this program. Ms. Lamontagne said not to her knowledge. She said this program is a continuation of what we have been doing. The only way the Town would incur costs is if the MOD rating increases on the workers compensation side but she did not anticipate any increases. She anticipated that the Town will actually make money through this program through the dividends.

Councilor Asherman motioned; Councilor De Lima seconded.

Chair Kuhn opened the public comment period; there was no public comment.

The motion carried unanimously.

**Item 7            Order to go into Executive Session pursuant to the Laws of Maine to discuss real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).**

Councilor Cahan motioned; Councilor De Lima seconded.

The motioned carried unanimously.

The Council entered executive session at 8:33 pm and did not return.

Respectfully submitted,

Marguerite Fleming  
Recording Secretary