

# Town Council Special Meeting Minutes November 13, 2019

Chair Kuhn called the meeting to order at 7:00 pm.

## **Roll Call**

Councilors Johnson, Cahan, Asherman, Kuhn, Trickett, and Hemphill were present and answering roll call.

Councilor De Lima was absent.

## **Item 1      Discussion and update on tasks being completed by the Long-Range Planning Advisory Committee (LPAC) as directed by the 2019-2020 Town Council Work Plan. Discussion to include possible direction from the Council to suspend work on current assignments until further notice.**

Councilor Kuhn said there was a heated and emotional public forum at the October 28 meeting regarding LPAC. In response to that event and to respect people's engagement she and Councilor Asherman wanted to make the topic an agenda item so that the Council could address the issue transparently and with responsiveness. The Council previously directed LPAC to review data that could be useful in analyzing the implementation of the 2013 Comprehensive Plan and which could be useful in the formulation of a comprehensive plan update. Several months later, the Council decided not to add any new members to LPAC because the Council had not designed the broader plan for the comprehensive plan update. She came to understand at the last Council meeting that those two things created a contradiction in the work plan. She noted that there was a public comment period at the last meeting. She thought that most if not all the people who were directly impacted had an opportunity to speak. She thanked those individuals. She came to understand the issue in a way that she had not before. It became clear to her that LPAC's data collection assignment ought to be done by a larger group of diverse viewpoints in the context of a larger comprehensive plan process. She and Councilor Asherman are recommending that the Council direct LPAC to suspend work on current assignments until further notice. She and Councilor Asherman met with the current LPAC members to explain the decision and most of them supported it. The update of the comprehensive plan is only going to work if there is widespread community buy-in. Councilor Asherman added that he has served on LPAC. He was impressed by the committee members' hard work during the process of updating the Open Space Plan. He has tremendous respect for LPAC and its members. In terms of the Council considering how to move forward with the comprehensive plan and what that process will look like, he supported keeping LPAC's momentum going because they are so productive but he has seen a lot of confusion in the community and a lot of concern over things such as members' term limits. The Council is still trying to address the process at the same time. He felt strongly that the Town ought to have a fresh start in terms of looking at the comprehensive plan. There should not be concern about people rotating off the committee in mid-process which could happen because of term limits on LPAC. He felt that if there is a fresh start, everyone can be the same page about how the process will work. The Council will be discussing the process at its upcoming workshop. We could end up duplicating our work if LPAC continues to work on that data and a new committee is formed.

Councilor Trickett felt that there had been some inconsistencies in the debate over this topic. The Council has discussed wanting to do a better job than was done during the 2013 comprehensive plan process to solicit the views of the town as a whole. There are several thousand voters in this town but the old ways of doing public outreach only yield responses from a few hundred people. He did not feel that the Council was ready to appoint people to a small committee to develop the land use policies of the Town before the Council has undertaken a process that people view as being both in good faith and effective in ascertaining residents'

visions for the future. He felt that it would be a mistake for LPAC or any other small group in town to start substantively working on advancing the comprehensive plan update without knowing if that work is going to be consistent with what a visioning process determines that the public wants. He felt that this is a necessary thing to do and that the Council should have done it earlier. The Council is considering whether LPAC is going to be the group that updates the comprehensive plan. That does not mean that there will not be a role for LPAC. It may be that LPAC plays a big role. He would like to see a group of people assembled who work closely with the Council. He desired for the group to be appointed after an understanding of the Town's vision on land use policy has been developed. He wanted to have diversity on that body and a variety of views. He also desired that group to have a commitment to implementing the feedback from the Town. He wanted to honor people who were interested in serving on the committee but felt that the Council should want a spectrum of backgrounds and expertise. Some of the issues raised by the comprehensive plan are very complicated. He felt that the Council would want to draw on a community that has a lot of very talented people. He felt that this committee could not be filled until after the visioning process has been conducted. He heard from a lot of people who spoke at the last meeting about importance of having a diversity of views and the expertise of the people who applied. He felt that it is very important to have different views. He did not agree with the idea that it is inappropriate for the Council to ask people what they want the Town to look like in the future when they are applying. If the Council wants to populate the committee with different views, then it should be allowed to ask people what their views are. He did not have a predetermined idea of who should be on this committee. He rejected the idea that the Council is acting in bad faith. He felt that it was not constructive and inconsistent with the Council's efforts to suggest that the Council's decision to table LPAC's work is some sort of conspiracy to exclude viewpoints or reach a result. The only way that this is going to be a successful process is if the Council does this in the right order and that is getting the feedback, determining the vision and values, and then implementation.

Councilor Hemphill added that the Appointment Committee had five very interested candidates for LPAC. The Committee appreciates these individuals' interest. There were some mixed messages, but the Committee is interested in their continued interest in LPAC and participation in this process. The Council has some work ahead of it.

Councilor Cahan said that diversity of voices includes diversity of residency, as well as business representatives and strong neighborhood advocates. She felt that the current LPAC members are very qualified but that they were not originally picked with diversity of voices that in mind.

Councilor Johnson appreciated Chair Kuhn's laying out of the timeline. He felt that there was a lot of emotion and confusion wrapped up in what the Council was or was not doing. This process yielded that there is a lot of interest, compassion, and energy behind this. If this is laid out correctly the right people will be in place to institute this committee.

The Councilors present agreed by consensus to table the work of LPAC indefinitely.

Councilor Asherman will communicate the Council's decision to the LPAC chair.

**Item 2            Public Hearing on an ordinance to amend the maximum levels of income and expenses for the General Assistance program, Chapter 6, Article 6, Section 6.68, Appendices A-F and H of the Falmouth Town Ordinance.**

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

The order was scheduled for December 9.

**Item 3           Public Hearing on an amendment to Sections 7-7, 7-8, and 19-128 of the Code of Ordinances relative to abutter notification requirements for Planning Board site plan and subdivision applications.**

Councilor Cahan said that the Community Development Committee was tasked with reviewing the Town's abutter notifications to see if they seemed adequate. The Committee looked at five neighboring municipalities and compared Falmouth's abutter notification requirements. The Committee found that Falmouth's current abutter notification requirements were not meeting what the Committee thought would be the proper standards. The Committee is bringing forward a recommendation to expand the current direct abutter requirements to 500 feet for Planning Board site plan applications, 250 feet for minor subdivision applications, and 500 feet for major subdivision applications. She provided definitions of major subdivisions and minor subdivisions.

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

The order was scheduled for December 9.

**Item 4           Discussion about the Greater Portland Transit District (Metro Bus) preliminary FY 2020 budget.**

Mr. Poore said that he realized several years ago that the Council was not well informed of its right to object to the Metro Bus budget and that if the discussion is scheduled for the last meeting of November the Council does not have a chance to take action. Town staff, therefore, try to schedule this discussion for the first meeting in November in case the Council has any objections. If there were concerns, then it would be put on the second November meeting agenda so that the Council could take action to object it. He did not believe that an objection has ever happened in Falmouth or any of the other Metro communities. State Statutes lay out that process if the Council did desire to object to the budget.

Councilor Cahan said that there was a presentation last year in anticipation of the budget increase. It is not a surprise to Councilors who served on the prior Council.

Greg Jordan, Greater Portland Metro General Manager delivered the presentation. He provided an overview of the organization and outlined past and upcoming improvement projects. Metro expects a 45% increase in boardings over this time five years ago. He reviewed transit service in Falmouth. He reviewed upcoming projects including automated fare payment, a fare increase, transitioning to battery electric buses, and a full reboot of service on the Portland Peninsula. He reviewed the FY 2020 Budget Summary. Metro anticipates a total budget increase of 6.6%. This increase is largely due to costs related to a service expansion last year, the automated fare collection software, and two new staff positions. Falmouth's local assessment will increase 12.9% due to the phase out of a federal grant program. He described the Metro budget process.

Councilor Trickett asked if Metro had data on the number of people who use Route 7 in Falmouth to go to Portland versus to come to Falmouth. Mr. Jordan said that Metro has stop level data, so it knows the activity at every stop based on technology on the buses that counts boardings and alightings. Metro has this data for the trip going to Portland and coming back to Falmouth. Councilor Trickett said that he would have assumed that it would be a commuter bus primarily for Falmouth residents going to Portland, but he has gotten the sense that there are a substantial number of people who commute in the other direction. He asked if Mr. Jordan had a sense of the ratio of which direction people are traveling in terms of commuters? Mr. Jordan said he did not have that ratio memorized but that he could research it. He could also figure out the number of boardings that are occurring in Falmouth versus in Portland as well as across the entire route. Councilor Trickett asked if the budget assumed that Metro would receive federal funding. Mr. Jordan said that was correct. Councilor Trickett asked about the risk to Falmouth of Metro not receiving the increased federal

funding. Mr. Jordan said that Metro has established high level contingency plans for if it does not receive the federal funding so that the local assessments would not be affected. Once Metro goes through the budget approval process it cannot change the local assessment. Councilor Trickett asked how Falmouth's assessment is determined and what the drivers are for increases? Mr. Jordan said that the procedure for determining the local assessment is that Metro allocates costs based upon revenue hours or how many actual hours of service are being provided on Route 7 and how that is distributed between Portland and Falmouth. Once those distributions are determined, Metro applies fare revenue based on where boardings are happening at the route level. Fare revenue can change the local assessment in the end. If one route has higher ridership than another route more fare revenue is going to be credited to that route. Metro then applies all the federal, state, and other sources of funding mostly uniform across the board based on revenue hours. Some grants that are dedicated to specific routes. That is particularly the case with Metro's most recent expansion, the Husky Line, and the Route 3 which serves Portland, Westbrook, and Gorham. The funding for that expansion is applied only to that service so it does not benefit any of the other communities. Part of the reason why Falmouth is seeing a difference is that Metro has requested sizeable increases in the startup funding for the service on the transit west expansion, the Husky Line, and the Route 3 from MaineDOT which is probably skewing down Portland and Westbrook's contributions.

Councilor Cahan appreciated Mr. Jordan and his staff's hard work. She felt that it is an exciting time to be part of transit in the region because there is a lot of work being done to better transit as a whole and make it more seamless for riders. GPCOG and PACTS are working with the whole region to figure out a better way to coordinate everything. Metro has been very engaged in that.

Chair Kuhn appreciated the advanced notice about the increase to Falmouth's local assessment. She asked what Mr. Jordan foresaw for next year. Mr. Jordan said that because this credit issue has been resolved, the increases should be back to regular territory going forward unless there are additional service improvements that would necessitate the cost going up. He did not anticipate anything larger than a 3 or 4 percent increase next year.

Councilor Cahan said that with the work that the region is trying to put together there could be some interesting pilot ideas presented for Falmouth. There could be ways to reconfigure or add loops in Falmouth.

Councilor Hemphill was looking forward to seeing the electric buses in town. He felt it was exciting technology and great to take advantage of the funds that have become available. Mr. Jordan said that the electric buses come at a higher capital cost but if things go the way Metro believes they come with lower operating costs.

Mr. Poore said that he has been part of Metro since he began working for the Town. The Town fought to keep the funding, but it was time for that to change. He has high confidence in the staffing and the board members. Falmouth is very lucky to have quasi-governmental partners like Metro and ecomaine.

The Council agreed to accept the budget as presented.

**Item 5            A resolution to support the efforts of the Maine Bicentennial Commission.**

Councilor Johnson read Resolution 51-2020 into the record.

Councilor Asherman moved the resolution; Councilor Trickett seconded.

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

Motioned carried 6-0.

**Item 6            Order to approve a supplemental appropriation from the Ocean View / Natural Gas TIF in the amount of \$16,000 to fund Falmouth programs, activities, and events in celebration of the Maine State Bicentennial.**

Councilor Trickett was in favor of allocating the money but asked if the town would be taking money from anything else by allocating money from the TIF. Mr. Poore said no, the Town uses the Ocean View/Natural Gas TIF specifically to fund community events. It is meant to support community and economic development.

Chair Kuhn said that staff recently received a grant for curriculum materials related to the Edward LaSalle map painting. She asked if the grant was in addition to the \$16,000 or offsetting of the \$16,000. Mr. Poore said it is in addition and it will be put into a special revenue account.

Councilor Cahan moved the order; Councilor Asherman seconded.

Chair Kuhn opened the public comment period; there was not public comment.

Motion carried 6-0.

**Item 7            Ordinance to amend the Code of Ordinances Section 19-23.11 to extend the time limits for development under the Tidewater Master Development Plan and to remove the prohibition on filing for Site Plan Review within the areas known as TF2 and TF3 within the Tidewater Master Planned Development District.**

Councilor Hemphill said that this item has come up several times over the past five or six years. The extension of the Master Plan was timed to encourage a plan for TF2 and TF3 from the previous owners whereas now the town owns TF2 and TF3 with a plan that is separate from the previous motivation. The Committee has decided to recommend extending the Master Plan for ten years expiring on October 2029.

Chair Kuhn said that the Planning Board held its MRA hearing on October 7 and voted 5-0 to recommend that the Council approve the proposed amendment.

Mr. Poore said that the Town has not made much progress on the demolition plan for the Tidewater buildings. It will be necessary to conduct an asbestos assessment. The Town will hire a professional consultant to conduct do the assessment so that the bidders for the demolition will know what they are up against. Councilor Cahan asked if the assessment would include lead paint? Mr. Poore said that lead paint is not as much of a disposal issue as asbestos. Lead would be an issue if there were to be inhabitants, but it is going to be demolished. Councilor Cahan asked about reusing portions of the structure. Mr. Poore said that would be an issue if the Town was looking at reusing portions of the structure. He felt that anything that would be reused would not have paint on it.

Councilor Hemphill moved the ordinance; Councilor Cahan seconded.

Motion carried 6-0.

**Item 8            Ordinance to amend the Code of Ordinances, Chapter 11-3, Sections 3-1 and 3-4 to clarify the definition of a nuisance dog and to provide more options to better enforce the ordinance.**

Councilor Trickett said that the existing ordinance does not have any objective criteria with respect to determining whether a dog is a nuisance dog which practically speaking limits the Police Department's ability to issue summonses and determine whether or not legal action can be taken; it makes it a subject judgement both on the part of the complainant and on the part of the person enforcing. The Police Department and Animal Control Officer canvased local communities and looked at their ordinances and the ordinance that made the most sense based on their experience was Cumberland's which is like the one that is being proposed. He worked with Chief Kilbride after the introduction to refine the language, but they did not change it in a substantive way. Effectively, the language that is being proposed defines a nuisance dog as a dog that barks continuously for twenty minutes or more or intermittently for more than an hour without any reasonable provocation.

A resident sent an email to the Council expressing concern that the new definition might limit the ability to report a dog if the dog was barking for several minutes but less than twenty. Councilor Trickett said that his understanding was that most of these cases are handled informally where the Police Department responds to a concern about a nuisance dog, educates the dog owner, and most cases are resolved without a summons. The amendment would create an objective criterion. The Police Department would continue to respond to any concern about a nuisance dog and continue to try to handle the issue informally as it has been doing but now with a back stop of having an objective criterion that is defensible in court. Chief Kilbride said the concern from the citizen was that they felt that they could not call the Police Department if they believed a dog was being a nuisance. The Police Department deals with dozens of calls a day, hundreds a week without taking law enforcement action. It is keeping the peace and educating people. This falls in those lines that the citizen feels that it has not been the twenty minutes or the hour, but it is a nuisance. The Police Department deals with conflicts with neighbors all the time and are trained to mediate that. He encouraged the citizen to go ahead and alert the Police Department. This ordinance change is objective; it allows the Police Department to deal with the problem dog or individual. There had been frustration on the part of citizens regarding the lack of enforcement.

Councilor Trickett moved the ordinance; Councilor Asherman seconded.

Motion carried 6-0.

### **Adjourn**

Councilor Asherman motioned to adjourn; Councilor Cahan seconded.

The meeting adjourned at 8:11 pm.

Respectfully submitted,

Marguerite Fleming  
Recording Secretary