

Town Council Meeting
DRAFT Minutes
January 23, 2017

The meeting was called to order at 5:30 pm.

Roll Call

All Councilors were present.

Workshop Item Council workshop on local regulation of marijuana.

The Council met with the Town attorneys for a presentation on the marijuana referendum and its impact on local regulations.

Pledge of Allegiance

Chair Farber led those present in the Pledge of Allegiance.

Item 1 Public Forum

No one spoke for public forum.

**Item 2 Order to approve the minutes of the December 12, 2016 Town Council
(Consent Agenda) Meeting.**

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

Councilor King made an amendment to the minutes.

Councilor Kitchel moved the order; Councilor McBrady seconded. The amended minutes passed 7-0.

**Item 3 Report from Council Committees and liaisons regarding updates on
assignments.**

Councilor Hemphill reminded everyone that nominations are open for the eco-maine eco-excellence awards until February 3. They look to recognize individuals and organizations that are good environmental stewards.

Councilor Kitchel spoke about the tour LPAC hosted of the town's open spaces. It was a great outing.

Councilor McBrady said there are two opportunities for public comment being hosted by the Route 1 North Committee this Wednesday at TideSmart. One session is at 11:30 am, the other is at 5:00 pm. He encouraged people and business owners to attend a meeting to weigh in on the project.

Chair Farber reminded people that the town has two surveys available online: one to solicit feedback on the Route 1 North project, and the other on the town property at 260 Foreside Road. Paper copies of each survey are available from Town Hall.

Item 4 Report from the Appointments Committee relative to filling various vacancies on Boards and Committees.

Councilor Svedlow moved the slate of appointments; Councilor Ferrante seconded. Motion carried 7-0.

- Economic Improvement Committee: Ethan Gamage
- Planning Board – Alternate Members: Nicole Cushman and James Kelly
- Recycling & Energy Advisory Committee: Alan Solander
- Tercentennial Advisory Committee (ad-hoc): Sandra Couch Kelly

Item 5 Introduction of an amendment to the Zoning and Site Plan Review Ordinance to increase the limitations for building expansion exempt from full site plan review.

Councilor King said the original minor site plan review ordinance was approved a few years ago to allow small projects to proceed without meeting the full zoning requirements of the VC districts, which might be cost-prohibitive for small properties. The current ordinance allows a building to expand either 20% or 1000 sf, whichever is less, before triggering full site plan review at the Planning Board. Buildings of 2000 sf or less are thus limited to very small expansions. The CDC found 22 buildings, both commercial and multi-family, that are affected by this limit. They recommend a change to the existing language, for all districts, to allow a building to expand either 50% or 1000 sf, whichever is less.

Councilor Hemphill clarified that this applies to the building envelopes. Some of these small buildings are not very functional at their current size. This amendment would allow them to expand and improve their ability to function.

The public hearing was scheduled for February 13.

Item 6 Resolution to adopt the Cumberland County Hazard Mitigation Plan.

Nathan Poore, Town Manager, said the county is required to keep a 3 year inventory of all threats in each town. Falmouth is lucky to have a short list of minor projects. Even though some of these projects have been completed, and others are showing incorrect numbers, the County has required them to remain on the list. This inventory and the attached resolution are required to be approved as presented.

Councilor King pointed out that all the threats listed are erosion and flooding related. She said this is a basis for future funding that might come; Mr. Poore said that is correct. Councilor King wondered about the type of project that gets included and how narrow the scope is. Mr. Poore said it is for natural disasters. Falmouth is lucky in that it fares pretty well in major storms.

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

Councilor Hemphill moved the resolution and read it into the record; Councilor Kitchel seconded. Motion carried 7-0.

Item 7 Order to discontinue a portion of Squidere Lane and to authorize the Town Clerk to execute the Certificate of Discontinuance.

Chair Farber opened a public comment period.

Drew Wing, Avesta Housing, thanked the Council, Planning Board, and staff for their work on this project.

Chair Farber closed the public comment period.

Councilor Hemphill moved the order; Councilor McBrady seconded. Motion carried 7-0.

Item 8

Report from the Community Park Connector Committee, including a recommendation to consider alternative bicycle and pedestrian connections between the School Campus and Community Park.

Lucky D'Ascanio, Director of Parks and Community Programs, said that, in December 2015, the committee presented their research on a possible connection from the school campus to Community Park and some of the easements they could use; after that meeting the committee did some research on right, title, and interest pertaining to those easements and found they could not be used as they had thought. They have explored several other options and are unanimously recommending a connection using an existing trail on the McCrann property to lead to Falmouth Road, and then connecting to the sidewalk on Twin Ponds Drive. The Town has been working on a connection between these two properties since the 1990's. The committee still wants, and is working toward, creating a connection through the woods with a bridge over the railroad.

Councilor Kitchel said Community Park and the school campus are not connected. Ms. D'Ascanio said that is correct.

At Councilor Svedlow's request, Ms. D'Ascanio and Councilor Hemphill described where the trails connect to the school campus. There are two access points to the campus, which connect to the orange trails on the McCrann property managed by the Falmouth Land Trust. The trail connects to the pump station on Falmouth Road. They would recommend the length along Falmouth Road to the bike/ped group.

Councilor McBrady wondered how far that would be. Ms. D'Ascanio estimated it would be 1.5 miles.

Councilor Kitchel asked if the trail at Twin Ponds is utilized. Ms. D'Ascanio said there is no parking, but it is used by dog walkers, runners, and bicyclists.

Chair Farber said there is parking at the McCrann trail. She said if they improved the connection from McCrann to Twin Ponds, she thought they could add a crosswalk to link McCrann to Riverpoint. Ms. D'Ascanio agreed, and said that was why they wanted to send this recommendation to the bike/ped committee to avoid duplication of work.

Mr. Poore said the next step for the committee is to work with staff to look at the details and do some conceptual design. They would return to the Council at a later date.

Item 9

Order to approve the sale of approximately 3,065 square feet of property located at 22 Mill Road, such sale to occur based on the authority granted to the Town Council in Section 204.12 of the Town Charter and Section 16-43 of the Code of Ordinances; to waive competitive bidding, in accordance with Section 16-43 of the Code of Ordinances, based on unusual circumstances that the size of the property is too small to develop and the only likely purchaser is the abutting property owner at 22 Mill Road; and to authorize the Town Manager to execute and deliver a Municipal Quitclaim Deed substantially consistent with the terms of this order and materials presented at this meeting on behalf of the Town of Falmouth, and to execute and deliver such other documents as may be reasonably necessary to accomplish the transfer of the property.

Mr. Poore discussed some of the questions raised by the Council at their last meeting. Since that time the applicant has indicated that he is willing to move the garage 5 feet closer to the house; they are not able to move it any closer due to drainage concerns.

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Peter Blake, representing the applicant, said the boundary survey attached to the item, as well as the stakes on the property, reflect the movement of the garage 5 feet closer to the house. It is now 12 feet from the home, instead of the originally proposed 17 feet.

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

Councilor King asked if there were any precedents they should consider when selling town land like this.

Councilor McBrady pointed out that the owner is willing to improve the town property and he felt this was in the best interests of the town.

Councilor King felt this type of request has come up before and the Council has chosen not to act on it.

Councilor Svedlow didn't think this small a portion of land would benefit the Town that much; allowing the owner to build a garage will increase the tax revenue the Town receives from this lot.

Councilor Hemphill discussed the original trail proposed for this land by the Route 100 Committee; the property in question is directly on top of the proposed trail. The plan submitted suggests an alternate location for the trail. This section of land was not without purpose, and this sale would affect the intended plan for the park.

Councilor McBrady felt the alternate location for the trail is better than the originally proposed location. It is more level there. He felt this park was more of an afterthought for the Route 100 Committee. He thought this would be a better access point for the trail; the town would gain more tax revenue from the property; and would be a good neighbor.

Councilor King disagreed with Councilor McBrady on the access; she supported the original location. She urged the Council to be very clear about why they want to sell this piece of public property. Later they need to be able to reasonably defend a decision to sell.

Chair Farber agreed that this isn't an established park yet, but there is a plan, a sketch, and money allocated. She felt Councilor King raised an important question; whether the fact that they haven't built the trail yet makes this okay. She thought they would never consider selling a piece of Underwood Park, for example.

Councilor Kitchel said they need to consider the benefits to the Town and the needs of the landowner. He didn't think there was a downside to this transaction – the Town gets revenue from the sale, and future revenue from taxes. He agreed that he would never sell a piece of Underwood Park, but he felt this was okay.

Councilor McBrady didn't think they funded any improvements for this park with the Route 100 project. He thought they were being good neighbors with this transaction.

Councilor Svedlow thought the transaction would go through if it was between two private owners. He pointed out that the proposed trail's original location is placed quite close to the home – the garage will serve as a good buffer. He asked if they could earmark the proceeds from this sale to the creation of the park. Mr. Poore said they could.

Councilor King said the applicant has stated that he would help build the trail but there were no concrete plans. She wasn't sure what the Town was getting out of this, beyond a few tax dollars.

Chair Farber asked about a staff recommendation for the trail; Mr. Poore said the red line on the map attached to the agenda is where the staff recommended the trail be relocated.

Chair Farber asked about the sale price; Mr. Blake said the land is 2,510 sf with a price of \$7,500; they paid \$1,200 for survey work for the Town land and will pay \$6,300 in cash for the purchase of land.

Councilor Ferrante asked who drew the new trail location; Mr. Poore said it was located with staff input. He showed the location of the proposed garage on the survey and said it would be about 10 feet from the new trail.

Councilor Ferrante felt the pocket park is funded in the Route 100 plan; she didn't think this was about gain or loss but about being a good neighbor. She agreed with the plan to sell the parcel.

Councilor Hemphill asked about the accessibility potential for the original trail location compared to the new location. He thought the current path is very flat and could lend itself for an ADA trail. The new location is fairly steep and he thought they might need stairs.

Mr. Poore said it is flatter at the original location; there is one part of the new location that is quite steep and will probably need steps.

Councilor King asked if there was a potential for ADA access from the other access point.

Ms. D'Ascanio said neither location lends itself to full ADA compliant access; the flatter location could be an enhanced-mobility access point like the trail at Woods Road. There is grade all the way to the river.

Councilor Kitchel moved the order; Councilor McBrady seconded.

Chair Farber moved to amend the motion, reducing the size of the parcel to 2,510 sf while leaving the sale price as is, and requiring a hemlock buffer between the garage and the trail, and the construction of the trailhead with staff present; Councilor McBrady seconded. Amendment carried 7-0.

Councilor Svedlow asked for the funds from the sale to be earmarked for trail construction and park maintenance, and the mitigation of invasive species on the property. He asked if they needed a Council order to do that. Mr. Poore said if the Council supports that, he would incorporate that into the budget currently under development.

Councilor Hemphill thought they would not be considering this proposal if they had built the park already. Although small, this is a part of the Route 100 project and they are suggesting changing it. He didn't think this would improve the access to the park. He understood the benefit to the applicant, but he was concerned with the impact on the park.

Councilor Svedlow felt if they allocate the proceeds to the park, he felt better about it.

Councilor King agreed with Councilor Hemphill; the Town sold a portion of Hadlock to an abutting property owner, but that was part of the Town's plan to generate funds. It was a different situation.

Councilor Ferrante said this isn't an easy decision as a member of the Route 100 Committee but she felt this was a small sacrifice to the trail. They will have the same park. She had a small concern about the owner's ability to build up the garage and add an accessory dwelling.

Chair Farber said it would be limited by height, but the sale of the land does open up that potential. It is in the growth area. It is an old parcel, and would not be developed as it is if it was built today. She felt the addition of the garage would help to buffer the home from the trail. She was concerned with the precedent.

Amended motion carried 5-2 (King, Hemphill opposed)

Item 10 Discussion and update on the Middle Road reconstruction project.

Chair Farber said this project covers Middle Road from Johnson Road to the Cumberland town line. There was some discussion during the approval process as to whether to lay a water line in Middle Road as part of this project; the Council at the time decided to move forward without the water pipe. At a public forum on January 17, members of the public raised more interest in the water line than had been heard in the past.

Mr. Poore said a change to the design would delay the project, but it isn't a huge concern. There have been questions about water quality and the numbers cited; they would have to go back to the engineer to clarify those questions. Town staff would also review the area for potential future development; it is in the growth area.

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Chair Farber asked when Cumberland would receive their bids; Mr. Poore said it should be soon, probably within the next two months.

Councilor Kitchel asked if this would require a new storage tank; Mr. Poore said no. The water line extension would come from Tuttle and down Middle and then connect at Deer Run, where the current water line ends.

Councilor Kitchel asked if Cumberland would be an addition to the system; Mr. Poore said they will be if they construct this piece.

Councilor Hemphill asked about the importance of connecting to Cumberland and how it benefits both towns.

Mr. Poore said they looked at the “looping”, but Portland Water District (PWD) said, while that is the way to go, it is not that important in this area. That was before the town knew that there was higher pressure coming in to Cumberland. The cost estimating was based on the town’s engineers and the PWD’s engineers.

Chair Farber pointed out that PWD can’t fund these projects, but they can assist with expansions, moving from a 12-inch pipe to a 16-inch pipe, for example.

Chair Farber said when they did the study on water quality, they can only base those on reports the state has. The water quality would be a driving factor for her in making a change. Cost would be important and it will be good to see Cumberland’s numbers. They could ask residents to share any water quality tests they’ve had done, or have tests done and share those results with the Town.

Councilor Svedlow felt they would regret it if they didn’t do it while the road is open. It seems expensive but he was interested in looking at it.

Councilor Kitchel asked if landowners would be required to tie into the water line if it was installed; Mr. Poore didn’t know. He said they could create a special assessment district if the town pays for the water line extension, to recoup some of the costs from the property owners.

Councilor Hemphill supported further study into the water line.

Councilor King pointed out that this is in the growth area; she wondered about the potential for service in the area in the future.

Chair Farber pointed out that installing public water removes the need for private wells and could free up land for more development. She asked how they gauge interest on the side streets/private ways to tie into the water main. Mr. Poore said if they did tie in, it wouldn’t impact the Town’s cost. They would have to spend their own money to connect, and he felt it would be way too expensive. He didn’t think they would do it.

Chair Farber asked if this project would be considered a separate project from the road reconstruction. If it was considered a part of the Middle Road project, it would kick the project over \$1 million and they would have to go to the voters.

Councilor McBrady asked how many homes would be impacted by this extension; Mr. Poore estimated 20-25, and staff are evaluating how many might be built in the future.

Mr. Poore thought staff needs to review the looping benefit, considering the higher water pressure coming in from Cumberland. They need to review the build-out scenario. They need to look into the water quality and quantity in the area; he recommended that the Town hire a consultant to do testing for consistency. He thought some property owners might be concerned about their water tests becoming public knowledge. He thought they need to look into alternatives to address any issue(s) in the test results. He reported that delaying the construction project for this study might mean the project doesn’t get done for 3 years because of conflict with other scheduled road projects. He wasn’t too concerned with the delay. He will get an opinion from town counsel on whether this would be two separate projects.

Chair Farber didn’t want to delay the project if it turns out that they don’t want to add the water line; Mr. Poore said they could get some information for the Council at their next meeting.

Item 11

Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider the following:

- **acquisition of real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C); and**
- **Personnel matter, pursuant to 1 M.R.S.A. § 405 (6) (A).**

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

The Council entered executive session at 9:20 pm and did not return.

Respectfully submitted,
Melissa Tryon
Recording Secretary