

Town Council Meeting Draft Minutes January 28, 2019

The meeting was called to order at 7:00 pm.

Roll Call

Councilors Svedlow, Kuhn, Asherman, King, Hemphill and Cahan were present and answering roll call. Councilor Ferrante arrived later.

Pledge of Allegiance

Chair Hemphill led those present in the Pledge of Allegiance.

Councilor Svedlow moved to suspend Council rules and take agenda item 11 out of order before item 9. Councilor Asherman seconded. Motion carried 6-0.

Item 1 Public Forum

Councilor Ferrante arrived at the meeting.

Michael Doyle, of Portsmouth, NH, spoke about the first amendment and the public forum two weeks ago. He spoke about his efforts years ago to review town spending.

Eric Wiburg of Payson Road spoke in support of the Falmouth Center development and the benefits of the design of the development. The design supports the desires of the citizens as shown in a survey done years ago. It will provide a sense of place and economic development. The plan helps connect a disconnected recreation trail system. It will have little effect on Route 1 traffic outside its own boundaries. Traffic to the development will benefit the businesses along Route 1. The project is an opportunity to protect Mill Creek; the current development results in spiky flows to the creek without much treatment. The zoning request is modest and should be approved; the zone boundary between BP and VC-1 seems to have been arbitrarily chosen. He spoke about the importance of zoning; the revised boundary would not impact the interaction between adjacent land uses. He asked the Council to accept the zoning change and allow the project to proceed through the planning and permitting process.

Amanda Rand of Meadow Creek Lane discussed the history of the project to date. The project has moved quickly. She felt the zoning changes are not minimal. The BP line is the only thing standing between the town and this project, which she called "Maine Mall North". At the public forum on January 14, many residents spoke about their concerns about the project. She didn't understand why the Council would consider moving this project forward with the public response against it. It wasn't the public's job to prove why the zoning changes are bad; it is the developer's job to prove why they are a benefit to the Town. She asked the Council to stop wasting time considering these changes.

Amanda Hensen of Meadow Creek Lane said BP zoning includes provisions that require that uses should be buffered; the line was not drawn arbitrarily but to keep buildings the size of the Shaw's, as well as protect the town forest. She hoped the Council would be considerate of the public's input. The exceptions listed aren't just to VC-1, but to BP as well. Lighted fields are not allowed in BP. She urged the Council to keep the current zoning and the 50,000 sf restriction. BP is less dense than VC-1 for a reason, and the line was drawn for a reason.

Valentine Sheldon of Foreside Road didn't feel the Council heard what the vast majority of residents were saying at the public forum. The rezoning doesn't fit the vision and isn't good enough for the Town. He felt like the Council is not representing the citizens. He asked about the effort to review the 2016 rezoning and argued that it is taking too long. He asked the Council to vote down this rezoning proposal.

Mark Rand of Meadow Creek Lane was troubled with some of the comments from the Council after the last public meeting. He read quotes from the Press Herald and the Forecaster. He wondered why the developer feels supported in continuing his proposal. He was concerned with transparency and asked the Council to end this. He felt the developer was making promises that he can't possibly keep.

Ron Dearth of Falmouth Road honored Chief Tolan for his years of service to the Town. He was at the public forum and saw the opposition to the project. He realized the developer has a right to develop the property but keeping the current zoning will minimize the development and its impacts. He felt the Town would benefit from the TIF income, and the fields might benefit the local athletes. He contacted Falmouth youth soccer, and they responded that they didn't think they would have any access to those fields; they use the fields at Community Park. The broad consensus is that a zoning change is not wanted or needed; he felt Seacoast might try to sweeten the deal with free access to the fields, as they did in their bid to build in Freeport. Freeport's council voted down the development by 5-2. He felt this proposal is too good to be true. The residents have been emphatic that they are against any zoning change on Route 1.

Merrill Barter of Meadow Creek Lane read a letter for Michelle Sheldon of Foreside Road, who wrote about her concerns with how zoning changes are made and the lack of communication with residents. The residents are against the Route 1 proposal and there have been no studies proving that the development will have no negative impact on the Town. She asked the Council to vote no on the requested zoning changes. The developer could come back to the table with a more reasonable proposal that serves the best interest of the Town as well as their business interests.

Neal Kolterman of Foreside Road abuts the proposed development. The abutters do not want the Town to rezone the area. He didn't feel the impact of the development as a whole is clear. He wasn't comfortable with the impacts of noise, lights, and traffic. The developer said if the proposal wasn't passed by this summer, it wouldn't happen. That didn't turn out to be true. He argued that the trees on the site would not provide a suitable buffer. Making this zoning change would go against current zoning and policy. Only two people spoke in support of the development at the forum; he wondered why they were still talking about it. He urged the Council to reject the zoning proposal.

Chair Hemphill closed the public forum.

Item 2 Consent Agenda

- **Order to approve the minutes of the December 10, 2018, Town Council Meeting**
- **Order to approve the minutes of the December 20, 2018, Town Council Special Meeting**
- **Resolution recognizing Police Chief Edward J. Tolan (Ret.).**

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

Councilor King moved the consent agenda; Councilor Kuhn seconded. Motion carried 7-0.

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

Councilor King said LPAC is meeting regularly to review the 2016 residential growth amendments with a focus on the RA district. They plan to bring an update to the Council at the end of February.

Councilor Cahan said REAC hosted an energy fair this past weekend; it was well attended, with several vendors, and even test drives of electric cars.

Chair Hemphill said ecomaine's eco-excellence award nomination period will close this week.

Mr. Poore said FEIC's next business forum is scheduled on February 12 from 12:30 – 1:30. It will be at the High School and will focus on STEM.

Councilor Ferrante said Appointments Committee has been assessing whether they are interested in bringing forward a committee that would be geared toward encouraging wellness in town.

Councilor Kuhn said Ordinance Committee has been working on a new fee structure for sewer fees. That draft will be before Council in February.

Councilor Svedlow said the Conservation Commission has been working on pesticides, both education and controls.

Councilor Cahan said Council received a request via email from Salty Dog; they are asking for a zoning change to allow them to board dogs overnight. She felt CDC should review it before it comes to the Council. The Council will discuss this further when they update their workplan.

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

Councilor Ferrante presented the report. There is a slate of recommendations for reappointments.

Councilor Asherman moved the order; Councilor Svedlow seconded.

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

Motion carried 7-0.

Item 5 Resolution to designate the section of the Presumpscot River that runs through Falmouth as "The Lower Presumpscot Natural River Corridor".

Councilor King said the area is a wonderful place with a long history and it has made a great recovery.

Michael Shaughnessy, of the Friends of the Presumpscot, said they have worked for 25 years on the restoration of the river. Presumpscot was named "land of many waterfalls" by the Wabanaki; it supported a varied population of fish and birds. It was greatly polluted at one time; it flowed brown and it smelled so bad people avoided it. In the 30's it was considered the most dammed river in the country. One of the results of its polluted state was that people didn't want to live near it, and that has kept it in its wild state. It has come back biologically, and the wildlife has returned. There are wonderful, undeveloped stretches of waterway, and Falmouth holds one of the most beautiful stretches. The resolution seeks to generate recognition of the beauty and history the river has. It is a non-binding resolution; it doesn't restrict anything but speaks to the importance of the river to the community. Similar resolutions have been passed in Windham and Westbrook.

Councilor Kuhn read the resolution into the record.

A public comment period was opened.

Eduard van Loenen of Falmouth Road asked why they were doing this. Giving it a name doesn't change anything. He wondered if this was the first step in developing land use restrictions. He felt the final whereas is misleading. The only way to access and view the falls is from the Portland side; access on Falmouth side is over private property only. The property owners in Falmouth have a problem with people using their property without permission to access the Falls. He asked if there was a way to change or rewrite that section

to make it clear that the falls were only accessible from Portland. He spoke in favor of the Falmouth Center project; zoning is a flexible tool to create something that is attractive and an economic benefit to the Town.

Wayne Cobb lives near Allen's corner in Portland and has lived near the river most of his life. He spoke about the odor from the river in years past. When he was growing up, the river was something to be avoided. He spoke about the efforts to restore it and he supported the resolution.

Councilor King said the Council received several letters in support of the resolution. She read a letter from Falmouth resident Sean Mahoney, who was unable to come to the meeting. Mr. Mahoney has worked with the Friends of the Presumpscot River. He strongly supported the resolution and urged the Council to approve it.

Chair Hemphill closed the public comment period.

Councilor Asherman clarified that the Portland side of the river is actually in Falmouth. Councilor Cahan agreed; the Stapleford neighborhood has trail access. That is in Falmouth.

Councilor Asherman grew up in Falmouth and supported the resolution. He remembered the pollution in the river way back; at times it had a foot of foam on top of it. He was amazed by the condition of it now.

Councilor King said to designate the corridor is to recognize the resource; it is a measure of pride for everyone who has worked to clean up trash and restore fisheries.

Chair Hemphill said he has canoed the river, and it feels like being in a remote area.

Councilor Asherman moved the resolution; Councilor Kuhn seconded.

Councilor Svedlow pointed out a typo in the resolution.

Motion carried 7-0.

Item 6 Public Hearing on amendments to the Code of Ordinances, Chapter 8, regarding temporary signs.

Councilor Svedlow said this is a response to a 2015 Supreme Court ruling, Reed v. Gilbert. It was introduced and had a public hearing, but the Council asked for some changes this past summer. It was reintroduced in November.

Chair Hemphill opened the public hearing. There was no public comment.

Councilor Ferrante didn't support the changes on signs on private property allowing signs every 30 feet. The previous version allowed 1 sign per lot. Councilor King said that the change was in consideration of people posting "no hunting" signs along their property line.

An order was scheduled for February 11.

Item 7 Update on the Falmouth Memorial Library capital project including fundraising efforts and minor alterations to the building and site design that will result in cost savings.

Seth Wilschutz of Scott Simons Architects gave a presentation of the changes that have been made to the site plan; the Planning Board heard this presentation and approved the changes earlier in January. The building has been moved closer to Depot Road. There will be 62 parking spaces, with 4 accessible spaces. The basement has been removed, along with the stairs and elevator to access it, and the steel bearing structure will now be a wood structure.

developer is interested in working on something like that with staff, Council, and the residents, she felt that was a good way to go.

Councilor Cahan agreed with Councilor Svedlow and Councilor Kuhn. She is concerned with not having a better traffic analysis and ceding control to the DOT. She was only comfortable moving forward with a full traffic analysis, including possible mitigation. She also felt they needed a full noise analysis. She was concerned with the outdoor field and whether or not it is beneficial to the Town; it doesn't seem that it was ever the intention for that to be in this area of town. The community has come out over and over to talk about their concerns on that. She supported a master plan or something similar, so they can configure the things they think are good for the Town. She felt the outdoor soccer field in this area is not a good placement for the Town.

Councilor King said when she first saw the project, it looked like a good village type development, with smaller shops and walkable places. That remains something they all want, and she supported that. The thing that has become apparent is that they really need some kind of project that people can get behind. It is a big thing for the Town. It is in the hands of a developer, but everyone has an investment in their heart for what happens there. She would like to see a development that people can get behind. She felt this plan is sufficiently problematic at this point; she didn't think previous Councilors thought an outdoor lit soccer field would be there. That is a sticking point, since the developer has said that it is the financial hinge. She wanted the developer to work more with them, and she hasn't seen that happen. She was concerned with traffic. They have been asking for things and not getting them back. She said a sense of collaboration and cooperation is missing and she had a problem with that. She didn't know whether a master plan or a zoning change would be better. Town Council should remain involved if they feel they can make a better product than can happen through conventional zoning. She said if they let go of this project, she would regret the loss of stormwater improvements on the site.

Councilor Asherman was enthused with the project when he saw it last summer; he liked the comprehensive vision. He abuts athletic fields that have noise and lights, but he has heard the concerns from residents and they should not and cannot be ignored. He felt many of those concerns can be mitigated with flexibility from the developer. He wasn't sure that was the best location for athletic fields, but the developer has said he needs them for the project to work. He would like the developer to work with them more. He would like to see the development move forward in an appropriate way, but that would have to involve the developer working with them.

Councilor Ferrante said residents have said that the Council is not listening, and have criticized the process, the Council and the developer. She said it isn't the developer's fault how they got here. The Town put out a RFP to find a developer to develop the spur interchange. She has spent a huge amount of time on this project and has spoken with a number of residents. She has reached out to her constituents, who have spoken about property rights, and flexibility on large, rare projects. People have spoken to hear about putting the right types of development in the right parts of town, adding to the tax base, keeping up with future infrastructure needs, and adding amenities to town. She was not in favor of some things but has spent a lot of time asking questions. The developer has been willing to answer questions. The project comes down to numbers for him, whether it works financially for him. She hasn't heard a whole lot of support for the soccer fields from anyone, so she has a hard time supporting that. She didn't think people, including Councilors, understand what is allowed in zoning. Councilor Ferrante asked what the height restriction in VC-1 is.

Ethan Croce, Community Development Director, said the maximum is 65 feet in VC-1, 39 feet in BP.

Councilor Ferrante said she isn't disturbed by the proposed VC-3; she is familiar with VC-1 and she supported putting the whole development under one zone. There is a lot that is already allowed. She asked about the rear setback in VC-1.

Mr. Croce said there isn't a rear setback in VC-1.

Chair Hemphill also wondered why the soccer fields are still being proposed after all the pushback. This project is a big ask. The Council has an opportunity to guide a project like this better than letting it develop under existing zoning. There has been an agreement on establishing stormwater controls on the whole site; right now, everything (motor oil, cigarette butts, etc.) flows directly to the creek. Establishing those controls is the single most important environmental protection they can do. He spoke about the mixed uses that would be a part of the development; he felt people would support those. There is likely some scale that needs to be maintained by the developer in order to fund the removal of the highway infrastructure. If the project is significantly scaled back, they risk losing the removal of the off-ramp. BP has benefits, and VC-1 has benefits. He hoped they could find a way to work with the developer on the issues of scale and size.

Councilor Svedlow said the developer is asking for a change in the law to accommodate their project. He is sensitive to personal property rights. The developer purchased the property with the current zoning. He appreciated the attempt to do something creative, but when you request a change in the law, you should expect to work closely with the body from whom you requested the change and not continually present the same plan. He sees no evidence that the developer is willing to work with them, on a master plan or with the existing zoning with some tweaks. The efforts of the Council to work with developers on creative projects hasn't been very effective in recent years. He felt it was faulty logic to assume that they would improve the stormwater treatment by treating the existing property while adding new impervious surface.

Councilor Ferrante asked how the stormwater gets fixed. Mr. Poore thought the only way would be if it got triggered by development.

Councilor Asherman felt it was good logic; there is absolutely no treatment there now. He understood there would be more impervious, but that would be brought to current standards and development is allowed under current zoning.

Councilor Ferrante asked what specifically Councilor Svedlow wanted the developer to do. Councilor Svedlow said he was willing to work with the developer on a master plan for the type, size and location of uses on the property.

Councilor King said if the Council and developer are engaged, they can make a good product with excellent stormwater management and good buffering. She would like to see the fields go away. She was okay with the village center concept, with mixed-use, residential areas and a hotel. She didn't need to see buildings fixed in place on a master plan.

Councilor Cahan would like to see a plan without the fields, with additional buffering and trees replanted, stormwater management increased, and a cap on the residential that is smaller than is proposed and with a significant number being 55+ housing. This is the right location for a mixed-use, dense project. She agreed with citizens that they don't want taxes to go up. The Town has TIF's which keep individual taxes lower. If this area is developed with good commercial it would extend TIF time and support keeping taxes down. We already need someone to help bring stormwater up; it either comes out of residents' pockets or commercial pockets. She supported the restriction on the size of the businesses to keep them small. She has heard desire for a hotel, but maybe it should be smaller. Anything that gets developed here will bring in traffic, and the need to know what that will look like and how it will be mitigated.

Councilor Asherman pointed out that Plan B was submitted in response to the Council's request for a plan that shows what could be put there under current zoning. The removal of the turnpike overpass and interchange is the result of a request from the DOT; they don't need the bridge anymore and don't want to pay to maintain it. Falmouth is a conduit to Portland and the traffic is going to increase whether they like it or not, and whether this development goes in or not. If they work with the developer, they can maybe get the developer to pay for changes that will need to be made anyway. He agreed that he wanted to see what would happen with the traffic.

Chair Hemphill asked about how to get a preliminary traffic modeling report, short of the full DOT approval process.

Mr. Poore explained that there are three options with traffic: letting the Planning Board and DOT review the traffic through the standard TMP process, which would allow the Council and public to weigh in through that public process; requiring the developer to submit all those materials to the Council for review prior to the DOT process; and providing some modeling to show what intersections might need improvement and what those mitigation efforts might look like. The Town's peer review engineer thought the third option was possible and would provide a good idea of the order of magnitude of the traffic impacts and required mitigation.

Councilor Svedlow wondered what they would review in the modeling assessment, since most of the Council has stated that they do not support the development as proposed. Mr. Poore said he would not support the modeling exercise, based on the discussion tonight.

Councilor Ferrante asked the Councilors to clarify their positions. Councilor King supported a VC-3 zone with mixed uses. Councilor Asherman supported a master planning approach; he wasn't confident how the project would come out with zoning only and he felt a master plan allowed the Council to stay involved with the project in the future. Councilor Kuhn didn't oppose linking the parcels together, under either a zone or a master plan but it feels a bit academic; the bigger issue is the size and she said she would rather under-develop it than over-develop it. Once it's built they can't pull it back. The Town is preparing to review BP zoning soon anyway.

Councilor King said it is hard to compare Tidewater with this project; the original zoning on the Tidewater parcel wasn't conducive to the development. This parcel has more comprehensive zoning that supports this type of development already.

Councilor Svedlow said the parcel could be rezoned as part of the master plan. The master plan is a more collaborative approach with the developer. He said it should not include outdoor fields at all.

Chair Hemphill felt there was some opportunity with a hybrid zone with elements of both VC-1 and BP. A master plan incorporated with a zoning change is what he would recommend.

Councilor Cahan wondered if both a zoning district and a master plan go with the land. Mr. Croce confirmed that is the case.

Councilor Svedlow felt a master plan would give them more micro-control with placement, with separate smaller zones on the property. He felt this parcel, since it is so central, deserves that type of treatment.

Councilor Ferrante felt these statements showed that the Council supported a master planning process, with a mix of BP and VC-1 elements. She echoed Councilor Kuhn that an effort to update and redo the BP zoning is on their workplan. It hasn't been touched in a long time.

Councilor King asked about the difference between a master plan and a zoning district.

Mr. Croce said master plans in Falmouth all have zoning districts that underly the plan itself. The plan is often a designers' preference situation; the items that past plans regulate could have been done through zoning. A plan could regulate some items more stringently; for example, if the Council wanted to regulate footprints and how they are configured, that would require a master plan. If they are trying to determine where on the site uses can be located, dictate extra buffering and intensity of use, that can be done with zoning, sometimes more easily than with a master plan.

Councilor Ferrante thought zoning would accomplish everything they are looking for. She asked what the requested collaboration between the Council and the developer would look like.

Councilor Kuhn felt a charette a few months ago to see what the public wanted would have been a good idea. There needs to be flexibility in the design itself and some willingness to listen to the community on the part of the developer.

Keith Noyes of Gray Road asked what they could put on 10-11 acres for the school; that isn't very big. It was a lot of money for a small amount of usable property.

Mr. Poore said 10 acres can be a lot of land, depending on how it is developed. There is a pretty good chunk of land there when you include the school property, the easement and this lot. If in 40 years it isn't used and determined to be surplus, the Town could provide access to it across their property and sell it.

Councilor Svedlow wondered how big the elementary school is now. He felt you could put two school buildings on 10 acres.

David Banks of Foreside Road, representing the seller, said they received a report today that shows there is actually about 16 acres that is buildable, not 10. The landscape architect will do a plan for the 6 houses they are planning for the subdivision piece.

Mr. Poore said the subdivision approval is part of the conditions on the sale. Accessing those 16 acres would be problematic with current zoning restrictions and the topography of the site. There is a deep gorge. It works well for the Town to purchase this piece and a developer to build on the rest.

Mr. Banks said the engineers have come up on an alternative entrance on Field Road that would allow development on the lot in case the Town doesn't purchase it.

Greg Clugston of Field Road said the road is very busy with runners and cyclists and is in bad shape. He hoped the Council would look at the condition of the road as part of their vision.

John Winslow of Gray Road pointed out that Portland rezoned the Thompson Point property, and nothing was built there as it was proposed. He didn't think the Town needed to buy 40 acres and give the seller 6 lots that are probably worth \$150,000 each. He didn't see the value for the Town at this price. He has heard that school enrollment is dropping but they are buying this for future expansion. He would like to see less property being purchased with this deal; the remaining land would be open space anyway without the Town having to buy it.

Chair Hemphill closed the public comment period.

Item 10 Update regarding affordable housing development on Town-owned property on Marshall Drive, off Woods Road.

Theo Holtwijk, Director of Long-range Planning, said the Council created an ad-hoc group including staff, Chair Hemphill and Councilor Svedlow to conduct interviews with 4 developers who expressed interest in developing affordable housing in town. The group recommends that Habitat for Humanity of Greater Portland be selected as the principal developer and partner with the Town on the site, and that a portion of the site be reserved for exploration of development for special needs housing by a separate developer. If the Council agrees with the recommendation, the team suggested they could work with Habitat on a draft development agreement and also explore the feasibility of the special need housing. Habitat is proposing to build 2 dozen homes on small lots with a loop road. There is no request for a TIF district, but there is a request for the road to be accepted as a public street after it is constructed. Regarding ensuring the affordability of the homes he explained that Habitat works with eligible prospective homeowners and they use a combination of sweat equity, donations and grants to build the homes. The homeowners are free to sell the home whenever they want to. This project is modeled after a similar project Habitat recently completed in Scarborough.

Councilor Asherman asked how this would relate to the Town's residential growth caps; Mr. Holtwijk said the ordinance qualifies units at 80% of median income as affordable, and therefore exempt.

Councilor Kuhn asked when they should weigh in on the number of units. She felt the number of units is bigger than both the Scarborough and the Freeport project. She wondered if there was a way to scale it down.

Councilor Svedlow felt there was a natural phasing that happens; they are only able to build 4-5 homes/year.

Councilor Cahan appreciated the priority for people with a tie to the town, employees, former residents, etc. She visited the Habitat site and saw how environmental conscious they are. She was very impressed.

Councilor Ferrante asked about the feasibility of the special needs housing and why a different developer was needed. Mr. Holtwijk said Habitat does not develop special needs housing, but there are other developers that do. It typically comes with a service component. They need to talk with groups that know more about this arena. They think this could involve 4-5 acres of the site which might impact the number of single-family homes.

Councilor Ferrante supported that proposal and would like to see it explored, including recovery housing.

Councilor Asherman liked the priority for former residents and people with ties to Falmouth. Since Habitat works with applicants, they have more flexibility with who they place in the homes.

Councilor Cahan asked how they evaluate the impact of this project on the schools and how to involve the School Department in the process. Mr. Poore said the last time they asked the schools to weigh in on a proposal their only comment was that they would provide whatever services are needed.

Councilor Cahan was concerned that the schools are at capacity and wanted to know the impact of adding housing that is exempt from the growth caps. She felt the School Department should be brought in whenever they consider large-scale housing development.

Councilor Svedlow would like to have more updated information on school enrollment, perhaps annually. Councilor Kuhn agreed. She supported the project, but these are homes designed for families and she wanted to make sure they weren't biting off more that they can chew.

Councilor King wondered how the schools feel about growth, periodic bulges in their enrollment, and how they handle it.

Item 12 Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider the acquisition of real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).

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

The Council entered executive session at 10:45 pm and did not return.

Respectfully submitted,

Melissa Tryon
Recording Secretary