

**Town Council Meeting  
DRAFT Minutes  
February 22, 2016**

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

**Roll Call**

Councilors King, Hemphill, McBrady, Goldberg, Kitchel and Farber were present and answering roll call. Councilor Anderson was absent.

**Pledge of Allegiance**

Chair Goldberg led those present in the Pledge of Allegiance.

**Item 1                      Public Forum**

No one spoke at public forum.

**Item 2 (a)                      Order to approve the minutes of the December 14, 2015, Town Council  
(Consent Agenda) Meeting.**

**Item 2 (b)                      Order to approve the minutes of the January 11, 2016, Town Council  
(Consent Agenda) Meeting.**

**Item 2 (c)                      Order to approve the minutes of the January 25, 2016, Town Council  
(Consent Agenda) Meeting.**

Councilor Farber moved the consent agenda, Councilor King seconded. Motion carried 6-0.

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

Councilor King invited the public to a workshop next Wednesday, February 24, on proposed residential zoning amendments that the CDC has been working on for over a year. They will present recommendations based on the 2014 comp plan. The workshop is from 6:30 to 8pm in Council Chambers.

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

Councilor McBrady said there is one appointment recommended tonight. He said there are several vacancies and urged people to apply.

Councilor McBrady moved the appointment of Sue Raatikainen to the Human Services Committee; Councilor Farber seconded. Motion carried 6-0.





Ms. Stearns said there was one; it had several issues including egress, intersection safety issues, and a loss of open space. Staff are comfortable working with projects that are very discrete and are not asking for any waivers or difficult interpretations of the ordinance.

Councilor Farber gave an overview of the type of projects that have used this process; they are typically 400-500 sf and include storage sheds and loading docks. These small projects often have low visual impact. She said the other reason to bump a project to the Planning Board is to open up the public input process.

Councilor King thought the footprints that would be approved under this provision will be bigger if the 500 sf size limitation per application is lifted. That will increase the visual impact of a project.

Ms. Stearns agreed that there are several projects in this list that would have been larger if they had been allowed to do the entire 1000 sf at one time. The process still applies any and all design guidelines and zoning changes to the proposed improvement, which will ensure that these structures complement the rest of the development.

Councilor Kitchel said this threshold is designed to speed up the process and make it easier for the applicant. Ms. Stearns said that is correct. The cost of review is the same but there is no requirement to notice abutters. The staff review process is the same.

Councilor King asked if this was designed so that the whole building would not be subjected to a full zoning review and upgrade to current zoning standards. Ms. Stearns said that is correct. Staff have found that property owners often want to upgrade certain elements, such as lighting, and if they do they have to conform to current standards.

Councilor Farber said this is about previously developed commercial and multi-family developments; the limit is 20% of the existing square footage or 1000 sf, whichever is less. An applicant couldn't take an existing 1000 sf building and double it, for example.

Ms. Stearns said only properties that have already received a Planning Board site plan review are eligible. If a property has not been reviewed previously by the Board it would have to go through the Planning Board process.

A public hearing was scheduled for March 28.

**Item 10 Introduction of an amendment to the Zoning and Site Plan Review Ordinance Sec. 19-23.11 Master Development Plan Time Limits, in order to extend the Tidewater Master Plan Development District an additional six months.**

Councilor Farber said the materials that the developer submitted were very late and lacking detail. The developer needs more time to meet the Town's requirements. It is in the Town's best interest for the master plan to be amended properly. Councilor Hemphill agreed.

Chair Goldberg said delivery of the documentation is the first step; he asked if this will happen in six months.

Ms. Stearns said the subcommittee is meeting this week to review the documents and send back comments to the developer. She thought there would be several communications back and forth.

A public hearing was scheduled for March 28.

**Item 11 Discussion and possible Order for the approval of a consent agreement for the violation of setbacks at 20 Preservation Drive.**

Ann Freeman, attorney for the applicant Dale Bragg Builders, said the Zoning Board unanimously approved their mislocated dwelling appeal on January 26. She said the parcel is lot 2 of the Foreside Woods

Subdivision, which abuts the Falmouth Forest Preserve. This subdivision was approved in 2001 and this is the last lot to be built. The building permit was issued in July 2015. The building company hired Dave Chase Excavating to dig and set the foundation. Mr. Chase proceeded in his customary way; nothing in the construction was concerning in regards to the setback. The house was set back 23 feet from each property line, 3 feet within the allowed 20 foot setback. In December 2015, once the home was mostly complete, the bank came out and did a routine survey. It was this survey that uncovered the encroachment. The garage is 3.2 feet into the setback at the northeast corner, and the 1.8 feet in the setback in the back corner. This is about 55 sf of total encroachment. Mr. Bragg and Mr. Chase came to the Code Office immediately to try to find ways to correct the issue. They tried to acquire land from the abutter and move the property line back, but that failed. She is aware that a penalty is possible, and asked that the penalty be reasonable. Mr. Chase acknowledges that there was a mistake here; he measured where the foundation should go three times. The property line cants, and is not 90 degrees. This impacts a small slice of property. The affected abutter testified at the BZA hearing and supported the appeal. There is a significant landscaping plan that will be installed along that property line as a buffer. She reiterated that Mr. Bragg and Mr. Chase did not do this intentionally and feel horrible about it.

Chair Goldberg felt it was clear that this was a mistake and requiring them to tear down and rebuild the house is excessive.

Councilor McBryde agreed that it was a mistake. He supported a fine to cover the Town's legal costs; he didn't want to do any more than that. Councilor Farber agreed.

Chair Goldberg opened a public comment period.

Fred Chase testified to the character of Mr. Bragg and Mr. Chase. This was caused by the angle of the property line.

Councilor King wondered if there is customarily a buffer they leave when they blast. She wanted to know how easy it is to make this type of mistake and is there a way to avoid this problem.

David Chase said it was completely his fault. He was the original developer of the subdivision. It was a long approval process, and it was very specific as to the protections of the buffers. He laid out the house three or four times, and can't explain how he made this mistake. He said there was no advantage to him messing this up.

Public comment period closed.

Councilor King asked if there is anything the Council can do to prevent this happening in the future.

Mr. David Chase said Portland requires a surveyor to pin the site, but most sites in Portland are much tighter. He has seen projects pinned by surveyors that have been done wrong too. These things happen.

Councilor Kitchel said that, given Mr. David Chase's history in Town and that there was no intent to do this in order to accommodate the building on this site; he was in support of this.

Councilor Hemphill agreed that there was no intentional shift on the building. People make mistakes. If the abutter and the homeowner have an agreement, the Council should allow this to move forward with a minimally punitive fine.

Chair Goldberg spoke about setting penalties. While every situation is different, and flexibility is valuable, he felt the Council should have some kind of policy around this. At some point the Council may find itself with an application in which there was malice.

Chair Goldberg moved the order, with a penalty of no more than the town's legal costs; Councilor Farber seconded.

Mr. Poore asked if this is a Class A boundary survey; Mr. David Chase said the bank survey uncovered the problem and then they hired a surveyor to confirm.

Councilor Kitchel asked if the bank survey happened at the closing of the construction loan.

Andrew Golden, property owner, said the bank survey happened at either the second or third draw request. Construction started in late July; they didn't catch the error until late September.

Councilor Kitchel wondered if the bank was negligent in not doing their survey prior to the foundation being poured.

Mr. Golden didn't know; he is inexperienced in building homes. When he received the bank's phone call he immediately called Mr. Bragg, who looked into it right away. Mr. Bragg and Mr. David Chase were horrified when they discovered the error. Mr. Golden was surprised that the bank waited so long to do the survey.

Councilor Kitchel felt the bank was lax; he has seen that happen before and felt they could have done something differently.

Councilor Farber supported Chair Goldberg's suggestion on a policy regarding penalties for those situations that are not so clear. She said this is zoned RA and is not resource conservation. If the proposed zoning amendments pass next year, this would be within the suggested side setbacks and may become a non-issue.

Motion carried 6-0.

**Item 12                      Discussion of a proposed Conflict of Interest Policy and notice of a vote, to be held at the March 14, 2016 Council meeting, to amend the Council rules in order to incorporate said policy.**

Councilor Farber expressed her thanks to the subcommittee that drafted the policy. She said it is well considered.

Councilor Kitchel was comfortable with the proposed policy.

The Council discussed the wording of the paragraph, which states: *Councilors are required under this Policy to disclose any potential conflict of interest they may have in any agenda item before the Council. Once a disclosure is made, the Councilor shall either abstain from the decision making process (including any discussion, deliberation or vote).* They suggested changing it to "*(including any discussion, deliberation and/or vote)*" for clarity.

Councilor Farber was interested in the opinion of former councilors; she encouraged them to send their comments and opinions on the policy.

The vote was scheduled for March 14, 2016.

**Item 13                      Discussion about the future use of property owned by the Town of Falmouth and located next to Underwood Park on Route 88.**

Chair Goldberg gave a brief history of the property; the Town acquired it with the thought of adding satellite parking for Town Landing and demolished the derelict home on the lot, but the public didn't support the parking plan. The plan was abandoned and nothing has been done with the lot since then; it is currently vacant. The lot is still zoned for residential, and is now surplus property.

Councilor Farber was grateful for the background on the public input process in 2009. She was concerned with the lot not being part of anything. She wondered if it was in the Town's interest to take some of it and sell it as a house lot, and add some of the land to Underwood Park. She thought it will be more difficult to sell it the longer it sits vacant. She has been thinking about the value of open space in the growth areas, in light of the upcoming ordinance changes. She wondered about a new public input process.

Councilor King thought there might be other possibilities that might arise for this lot. In light of the upcoming ordinance changes, she wanted to slow down the discussion on this. Some other possibilities might arise for the property. She suggested tearing down the fence and cleaning up the property for safety.

Councilor Kitchel said this is very slow already; this is a 4 year old report and has a lot of information. Fiscally, if they sold one lot on the front they would likely get \$300,000 - \$400,000 for a full acre. The tax revenue from that would likely be \$10,000/year. There is significant financial benefit to the Town. On the other hand, he lives just down from this and he likes it empty. It has a nice feel to it; nothing has been done to it. He was interested in keeping it as is. He said the current playground is inadequate; he would like to see a master plan for Underwood Park and see it maintained. It links up to the Nature Preserve in the back.

Councilor Hemphill said he has heard from several residents that enjoy having it there. The initial intent for the lot has faded. With increasing pressures of development, having easily accessible open space is significant.

Councilor McBrady felt this would go hand in hand with the proposed zoning changes. He would be interested in some public input on the property.

Councilor Farber wanted to understand the connectivity potential from this property, what it connects to and where in the back. Councilors Goldberg and Hemphill discussed the pedestrian connections, both formal and informal, linking the cross streets to Underwood Park.

Chair Goldberg summarized the options: do nothing, add it to Underwood Park, or sell it for one or more house lots. He pointed out that proceeds from a sale could reestablish the parks fund.

The Council discussed next steps, including when to solicit public input. Chair Goldberg wanted to move this forward fairly quickly in order not to miss the market if they do decide to sell it.

Councilor King felt they should be careful in preserving park space; they shouldn't trade this for park space elsewhere in town.

Councilor Farber suggested referring this to a Town committee, either PACPAC, LPAC, or both, to review the available data and distill it. Perhaps the committee could first determine what the Town could use it for if they kept it.

Councilor King would like to find out what is important to people about this property, and then go from there.

Mr. Poore suggested a process of two facilitated forums; one for stakeholders including PACPAC, LPAC, and the Council, and the second for the general public.

Chair Goldberg suggested a Council subcommittee to meet and propose a process.

An order was scheduled on March 14 to establish a Council subcommittee.

**Item 14                      Order to schedule a public hearing on Monday, March 28, 2016 at 7:00 p.m. regarding;**

- **proposed amendments to the West Falmouth Crossing Tax Increment Financing District, and**
- **the June 14, 2016 referendum question authorizing \$6,500,000 of the Town's Bonds to finance a portion of the cost of the Route 100 Infrastructure Project to be supplemented by funds provided by the Maine Department of Transportation and funds from the West Falmouth Crossing Tax Increment Financing District.**

Chair Goldberg opened a public comment period; no public comment.

Mr. Poore said the only charter required public hearing for the referendum will be on April 25. The TIF amendment requires a public hearing prior to submittal of the application. Staff felt that an extra public hearing on the Route 100 project would be valuable.

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Councilor King moved the order; Councilor Kitchel seconded. Motion carried 6-0.

**Adjourn**

Councilor Farber moved to adjourn; Councilor Hemphill seconded. Motion carried 6-0.

Meeting adjourned at 9:15 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary