

# **Town Council Meeting Draft Minutes April 23, 2018**

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

## **Roll Call**

Councilors Svedlow, King, Farber and Kitchel were present and answering roll call.

Councilor Ferrante arrived late.

Councilor Hemphill was absent.

Vice-Chair Kitchel served as Chair in Chair Hemphill's absence.

## **Pledge of Allegiance**

Vice-Chair Kitchel led those present in the Pledge of Allegiance.

## **Item 1                      Public Forum**

Councilor Ferrante arrived at the meeting.

Mike Doyle of Shady Lane argued that the policy governing the Public Forum is unconstitutional and unenforceable. He gave the Council a copy of a letter from the Maine ACLU. He said the Council does not have the authority to amend a state law.

Steve Hundley of Brookfield Road spoke about cluster septic systems. If there is going to be cluster or high-density development in West Falmouth, where there will never be town sewer, there will be cluster systems. He believed these systems are a bad idea; they are prone to failure, pose a huge financial burden on the community and the development, and pose a threat to the environment. The town's ordinance is rendered meaningless by its interpretation, and allows these systems to be installed without any safeguards. There are three specific issues in the ordinance that should be addressed. He asked the Council to open discussion of this ordinance with the intent of revising it to clarify its intent and purpose and provide protections against structural failures.

Fred Chase said he is a gun person. Years ago, you would register your gun with the police department; they don't do that anymore. If everyone voluntarily registered their guns, we would at least have a record and it would make gun owners aware of their responsibility. He said anyone can carry a concealed weapon now without a permit; he doesn't like that. He had a permit for years. He felt the town should have these responsibilities again. He thought this is a better step forward than anything else he has heard.

## **Item 2                      Consent Agenda**

- **Order to approve the minutes of the March 5, 2018, Town Council/School Board Special Meeting**
- **Order to approve the minutes of the March 12, 2018, Town Council Special Meeting**
- **Order to approve the minutes of the March 26, 2018, Town Council Meeting**

Vice-Chair Kitchel opened a public comment period; no public comment.

Councilor King moved the consent agenda; Councilor Farber seconded. Motion carried 5-0.

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

Councilor King reported that the Tercentennial Committee hosted a trip to Falmouth, England as part of the 300<sup>th</sup> anniversary celebration. Chair Hemphill is currently on that trip representing the Town.

**Item 4 Report from the Appointments Committee regarding various vacancies on Boards and Committees.**

There was no report from the Appointments Committee.

**Item 5 Public hearing on an amendment to Section 19-124 of the Code of Ordinances relative to expanding abutter notification requirements for certain applications to the Board of Zoning Appeals**

Town Manager Nathan Poore reported that the Council assigned the Ordinance Committee to review all abutter notification requirements in the ordinance. They have recommended only one change to notifications in the Waterview Overlay District. This amendment would change the requirement to 250 feet instead of direct abutters only.

Councilor Farber asked about the Planning Board's recommendation that they extend the notification area to 250 feet throughout town.

Councilor Svedlow said all other notifications seemed consistent with each other, with the area, and with the type of application.

Vice-Chair Kitchel opened a public comment period.

Doug Popper of Wescott Street supported the review but wondered why they didn't go to 500 feet. In the Town Landing neighborhood, he thought people beyond 250 feet would be impacted by construction that impacted their water views.

Councilor Svedlow said the committee looked at different examples for that district, 750 feet, 500 feet and 250 feet. It was a tough decision, but they felt the 500-foot buffer would be onerous in terms of notice, since it extended to homes that were far away. They were also trying to make incremental progress and not a huge leap. They could review this if it isn't working in the future. This is consistent with other projects and areas in town, and with other notification requirements.

Councilor King agreed; the committee thought the radius of 250 feet would capture impacted properties.

Mr. Popper said it isn't just a question of views, but also the impact to the character of the neighborhood. Many people feel the construction degraded the community.

Vice-Chair Kitchel pointed out that the Planning Board recommended passage of the amendment.

Scott Walker of Gray Road asked the Council to evaluate the size of a project with regards to abutter notifications. He lives near the proposed Homestead Farm development, and doesn't receive notices. A project like that would impact the whole town.

Public comment period closed.

The order was scheduled for May 14.

Mr. Poore read the table listing each type of application that requires abutter notification and the amount of notice required.

**Item 6                      Public hearing on amendments to Section 19-18 of the Code of Ordinances relative to the amount of open space required for conservation subdivisions.**

Councilor Farber said when RCZO was originally passed, it required 50% of buildable space to be set aside for open space. It was amended a couple years later to be 30%. The RCZO includes language that encourages buildings to be grouped together to promote more contiguous portions of open space. The Council assigned a review of this to LPAC, and the committee has recommended that this set aside be returned to 50% in the Farm & Forest and Highland Lake Zoning Districts only. In response to the Council's question, LPAC has stated that they still support the recommendation and that moving to 50% will better protect the rural character of these areas.

Vice-Chair Kitchel opened a public comment period.

Fred Chase said he sponsored the change from 50% to 30% in 2011 when he was on the Council. He was building the Brookfield Road subdivision at the time, but he did not take advantage of the new rules; he set aside 50% in that subdivision. He supported the RCZO and its allowances on street frontages and lot sizes. He argued that the amendment to 30% wouldn't have passed if it didn't make sense. The problem is that RCZO is applied to every zone in town and every project. He said it shouldn't apply to every zone in town. Most of the land that is left in town is not desirable; the good land is built. He said they need more publicity on this change; no one knows about it.

Todd Kelley of Sulky Way said he did not support this. It would take too much of his land. He would rather say a maximum of 40% of land set aside. He said this is a land grab.

Public comment period closed.

Ethan Croce, Community Development Director, said the RCZO applies to the residential districts only. He said in those districts any project that doesn't require Planning Board approval would be exempt from the RCZO requirements. The RCZO would only apply to those projects that need to go to the Planning Board. Also, when the ordinance was passed in 2005 it included a one-time exemption from the requirements for lots in the overlay district are allowed. When calculating the set aside, a developer must take the gross area of the parcel, deduct the unbuildable areas (steep slopes, easements, wetlands, etc.), add that square footage to the set aside percentage of the buildable area (currently 30%) and that gives the minimum amount of common open space for the development.

Mr. Poore said the 30% will remain for the residential districts. This amendment will only change the set aside for Farm & Forest and Highland Lake districts. Mr. Croce said that is correct.

Councilor King asked about any discussion about a 0% set aside on lots of 2 acres or less; Mr. Croce said that is still being discussed by LPAC.

Councilor King asked about the compensating features of the conservation subdivision. Mr. Croce said developers are entitled to reductions in street frontage, lot width, and minimum lot size.

Councilor Farber asked how big some of the largest properties are in town that are still open for development. 50% of 5 acres is drastically different than 50% of 100 acres. Mr. Poore thought there aren't many left that are over 100 acres. There are probably 30-, 40- or 50-acre parcels left.

Mr. Croce said even if there is a large parcel, the owner wouldn't have to develop the entire parcel at once. A portion could be carved off and listed as undevelopable without further Planning Board approval and that section would not be subject to the set aside until such time and it was brought forward for development.

An order was scheduled for May 14.

Councilor Farber was concerned that the public was not aware of this potential change to the ordinance. She asked if the Council should take additional public comment. This is a significant change for a specific area of town.

Councilor Ferrante voiced her opposition to the amendment and thought it should be put off until the discussion of the July 2016 amendments. That would capture a large contingent of people who were interested in discussing zoning.

Councilor King supported following the standard amendment process; when it was changed to 30% there weren't additional hearings. She was concerned about the precedent of adding additional hearings.

Councilor Farber spoke about the history of the comp plan change and the development of the growth and rural areas. Prior to that, most of the homes being built were in the Farm & Forest district where there is no public infrastructure. This set aside is another tool to limit growth in the rural area, as well as to protect open space, green space and viewscapes.

Councilor Svedlow suggested adding a brief public comment period to the meeting on May 14. He asked for a report from LPAC or staff on the work they did on this amendment. Councilor King requested a summary attached to the agenda. Councilor Farber pointed out that the LPAC report from November 2016 is attached to tonight's agenda. This originally started with the online survey work related to the comp plan. The issue of the RCZO was included in the comments section on a number of the public surveys. This project has had many starts and stops.

The Council scheduled a public forum for May 14. The forum will be held immediately before the Council considers the ordinance amendment.

**Item 7                      Public hearing on an amendment to Section 8-16 of the Code of Ordinances to extend the moratorium on retail marijuana establishments and retail marijuana social clubs for 180 days.**

Councilor Farber asked if the new 180-day moratorium will begin as of March 26; Mr. Poore said that was correct.

Councilor Farber said she and Councilor King are the two members of the committee. They recently presented a report on the progress of the committee and said at the time that they could not proceed until there were some decisions made at the state level. Hopefully there will be some clarity from the state in the next few weeks.

Vice-Chair Kitchel opened a public comment period.

Keith Noyes of Gray Road asked what the benefit would be of another 6 months. He didn't think they would get anything more done in the next 6 months. There are pharmacies in town that deliver prescriptions that are far more dangerous than marijuana. Alcohol is more dangerous than marijuana. He didn't see what the hold-up is at the town level.

Vice-Chair Kitchel closed the public hearing.

The order was scheduled for May 14.

**Item 8                      Ordinance to amend the Code of Ordinances Div. II-2-3-12. *Economic Improvement Committee* to update the charge of the Falmouth Economic Improvement Committee (FEIC).**

Councilor Ferrante said the Council asked the FEIC to review their charge which they have done. Councilor Farber and Councilor King spoke to her about the proposed amendments and she would like to bring those comments back to the Committee for their input before the Council votes on this item.

Councilor Farber said she would like to remove the term "ordinance development" from the charge; that is a task of the CDC and is a role of the Council. While the Council looks to the committees for input on policy direction, actual ordinance development is the Council's job per the charter.

Councilor Ferrante said the charge does outline that they provide advisory assistance; they understand that developing ordinances is not their role. The workplan from the consultants included several items that relate to looking at the ordinances from a business perspective and offering recommendations from that lens.

Councilor Farber said the term “policy development” was more palatable.

Councilor Svedlow asked if there were any other similar committees that provide recommendations and input. Councilor King said other committees are clearly advisory to the Council. She pointed out that the Committee should provide guidance to the Council and not to town staff directly which is in the current proposed language.

The Council delayed a vote on this ordinance until Councilor Ferrante discusses these proposed changes with the committee.

**Item 9                      Resolution regarding a recently submitted voters' petition concerning high density residential zoning in established areas of the Town.**

Vice-Chair Kitchel opened a public comment period.

Mike Doyle of Shady Lane said that no one cares what the Council does until it impacts them. Everyone is now aware of the results of the Council’s actions. He thought to be fair to the residents of Falmouth the Council needs to outline the worst-case scenario of each change they make.

Public comment period closed.

Councilor King read the resolution into the record.

Councilor Farber pointed out a typo in the resolution. She didn’t think the second whereas accurately reflected the intent of the original ordinance amendments. The intent was not to increase density, but to shift development to those areas where there was infrastructure to support it.

Councilor King said the Council cannot increase density, just create the wherewithal for landowners and developers to create density if they choose to do infill development. She thought the intent was to slow development in the rural area, and make it more possible in the growth areas.

Councilor Farber suggested a change in the language in the second whereas: “as part of that ordinance, provisions relative to residential zoning were amended to allow increased density in certain geographical areas of Town called “growth areas”. The Council agreed to the change.

The Council discussed a date for the public forum as noted in the second paragraph of the resolution. They decided on “no later than October 1, 2018”.

Councilor Farber moved the resolution with the changes as noted; Councilor King seconded. Motion carried 5-0.

**Adjourn**

Councilor Svedlow moved to adjourn; Councilor King seconded. Motion carried 5-0.

The meeting adjourned at 8:45 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary