

**Town Council Special Meeting
DRAFT Minutes
May 8, 2017**

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

Roll Call

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

Councilor Ferrante was absent.

Item 1 Public Hearing on an ordinance to establish a moratorium on retail marijuana establishments and retail marijuana social clubs.

Chair Farber opened the public hearing.

Gerry Davis of Hamlin Road has lived in Falmouth for 51 years and supported the moratorium. He is a former legislator and school board member, taught school for 36 years, and was also a coach. He spoke about the impact of marijuana on students and student athletes; it negatively impacts their performance. He voted against the legalization of marijuana; he thinks it is a bad idea.

Jennifer Wahlig of Woodville Road has 4 school age children and supported the moratorium. She asked the Council to consider a ban on retail marijuana in Falmouth. She was concerned about the effects on people's driving, and the health and behavior of children. She felt it was confusing for teenagers to allow marijuana.

Ralph Warnock of Grist Mill Road has lived in Falmouth for 14 years. He presented the Council with a list of web links on the history of marijuana use. He is a former cancer patient who used medical marijuana in place of the prescription drugs he was given. Marijuana alleviated his symptoms. He said marijuana is legal in Maine and other states; as long as it is sold commercially it can be sold and regulated like alcohol and tobacco. He spoke about the abuse of painkillers and opioid addiction rates. Crime rates have not increased in states that have legalized marijuana; violent crime has decreased. Regarding the message to children: he said past efforts of banning and criminalizing marijuana have not worked. Reevaluating our prohibition of dangerous substances is necessary; it doesn't work. He favored the moratorium to consider all these issues. The commercial establishment will only grow and he felt Falmouth could benefit. Falmouth should establish a committee to evaluate the issue and give recommendations.

Elwin Hanson of Woodville Road said growers must keep everything legal and above board. Growers must be inspected. He said marijuana is still not legal according to federal law. No bank will issue a loan to a grower for an illegal activity. It is very high-risk both for the grower and the buyer.

Howard Reiche of Oceanview has lived in Falmouth for over 60 years. He believes that the referendum will be undone. He spoke about a time when the legislature moved the drinking age from 21 to 18; two terms later it was reversed. He hopes the same happens to marijuana; he thought it was the wrong thing to do.

Wade Wahlig of Woodville Road said his health teacher told his class that marijuana has negative impacts on the brain of children even at 18. This could make Falmouth a dangerous place to live in, and he felt they shouldn't allow it.

Chair Farber closed the public hearing.

An order was scheduled for May 22. At that time, the Council will discuss the next steps for addressing the issue during the moratorium, including what entity would lead the effort – options include Ordinance committee, CDC, the whole Council, an ad-hoc Council committee, an ad-hoc citizen committee, etc. Chair

Farber and Councilor Hemphill offered to meet with staff to draft a sketch proposal for the Council to review on May 22.

Item 2 Re-introduction of amendments to the Code of Ordinances regarding permanent signs.

Councilor King gave a brief history of the ordinance amendments, which are required due to a Supreme Court ruling which found that content-based sign regulations are a violation of free speech. The goal was to keep the intent of the current sign policies but to regulate them based on form instead of content. Staff reviewed the originally proposed amendments and suggested a number of changes.

Amanda Stearns, Community Development Director, said the suggested changes were not substantive, but based on the number of changes they recommended reintroduction. She outlined the proposed changes by section. She clarified that design guidelines are not zoning; while they are included with the amendments at the introduction and public hearing stages as a package, when the Council considers action on the ordinance amendments, they will take action on the design guidelines separately.

A public hearing was scheduled for July 10.

Item 3 Public Hearing on proposed amendments to the Code of Ordinances, Chapter II-13 *Solid Waste*.

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

Councilor King said one of the intents of this ordinance is to get all the waste from Town delivered to ecomaine. She asked about the exemptions.

Mr. Poore said everyone is included. This has been part of the agreement with ecomaine for decades. He didn't have any concerns about waste going elsewhere; the goal is to make sure that they don't have issues in the future. He thinks all the waste to going to ecomaine. The amendment updates the language and clarifies the licensing regulation. The only exemption is for a resident or commercial entity who chooses to deliver their own waste to ecomaine; that entity would not need to get a waste hauling license.

Councilor King said Hannaford crushes their cardboard boxes and has their own method for dealing with it. She wondered how that worked with this regulation.

Mr. Poore said this pertains to waste more than recycling. A business that generates a lot of recyclable waste can go directly to market with their recycling. A smaller entity can bring their recycling to the transfer station. He explained that the waste treatment facility was expensive to build and they needed to guarantee a certain amount of waste to justify the expense. That is where this regulation comes from and why it is more focused on flow control of waste instead of recyclables.

The order was scheduled for May 22.

Item 4 Public Hearing on a proposed ordinance, Article II-8-13 *Commercial Waste Hauling*, to limit the hours during which commercial waste containers may be serviced.

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

The order was scheduled for May 22.

Item 5 Ordinance to amend the Code of Ordinances, Use of Parks & Public Grounds, to address pets in parks and public lands.

Councilor Hemphill moved the ordinance; Councilor Kitchel seconded. Motion 6-0.

Chair Farber asked for a notice to be sent out to people about these new regulations. Councilor Svedlow agreed and asked for a notice to be posted to the website.

Item 6 Staff presentation regarding paper streets.

Jay Reynolds, Director of Public Works, gave a presentation on paper streets, which are streets that are laid out on a subdivision plan but were never built. The rights-of-way are created as part of the subdivision approval and there are public and private rights in these paper streets. All lot owners in the subdivision will typically acquire private rights in the paper street; those will not expire if the Town vacates the paper street. Paper streets that were created prior to 1987 were scheduled to expire in 1997; the Council took action at that time to extend the existence of the streets for 20 years. This extension expires in September of this year without further Council action. There are 35 paper streets subject to the automatic vacation. The Council has the option to extend these streets for another 20 years; do nothing and allow them to be vacated; accept the paper street and construct a public road; or accept lesser easement rights, such as for recreational use. He said staff and legal counsel will continue to review each paper street and will bring recommendations to the Council at their meeting on July 10 with a goal for Council action in August.

Mr. Poore said the Council could pass the extension and then consider action on one or several of the streets before the 20-year deadline.

Councilor Hemphill observed that the Council 20 years ago decided to extend this and thought it was helpful to hold on to them. He thought staff would recommend keeping these options open. Mr. Reynolds agreed. He said staff discussed all 35, and it was easy to find reasons to hold on to them. There are a few where the only benefit is a utility easement.

Councilor Kitchel asked if there a process to permanently designate them as paper streets to use as they are or does staff review the inventory and extend the deadline every 20 years. Mr. Reynolds said if the Council extended them for another 20 years, they would remain paper streets. Extending them for 20 years would not restrict the Council from taking further action on any of them.

Councilor King asked if they had any way to anticipate possible legal challenges.

Mr. Poore spoke about an old 1920's era subdivision with paper streets. The property owners that abut the paper street that leads to the water have concerns about public access across that strip, which they consider their property. The paper street only gives the Town incipient rights and does not grant public access, but it does grant access to other lot owners in the subdivision. If the Town vacated the paper street, those lot owners would not have access. If they accepted the paper street, it would grant access to the general public.

Councilor Svedlow said there are several opportunities for public access, especially to the water.

Chair Farber asked who owns the land under the paper street.

Lisa Magnacca from Drummond Woodsum explained that when a subdivision plan is recorded, Maine law states that the abutting property owners are deemed to own to the center line. Those lot owners are buying the paper street subject to the Town's ability to accept it, and subject to the rights of other lot owners who have the right to travel on the paper street. The private rights and public rights run parallel to each other.

Chair Farber asked what it meant to construct a public road. Atty. Magnacca said the statute states "constructed or used"; there's no definition as to what that means, but generally it is understood that cars are not driving on a paper street.

Chair Farber asked if deciding to accept a street as a public way triggers a financial obligation for the Town. Atty. Magnacca said there are four options for acceptance: accepting it as a public way would be assumed to mean as a vehicular road and the Town would be obligated to construct and maintain it.

Councilor King pointed out that a public way could be a public walking path. Atty. Magnacca said one option is to accept lesser rights, including recreation and utility easements. This would allow a trail to be built, but would not create the obligation to build a road.

Councilor Svedlow asked what happens to the private rights in the case of a recreation easement. Atty. Magnacca said the lot owners would own to the center line as they always have, subject to the Town's easement.

Councilor Svedlow asked if the owners would have any recourse if the Town took an easement; Atty. Magnacca said the Town's rights were granted at the recording of the subdivision. It is possible that property owners might not be aware of the presence of the paper street but the subdivision plan is referenced in people's deeds.

Councilor Svedlow felt this was an opportunity; there isn't much water access in Town. He wondered about extending the streets, and then assigning it to a committee to review each one for access potential.

Chair Farber pointed out that many of these extend all the way to the water. She thought there must have been a reason.

Mr. Reynolds said one of the old subdivisions that has a paper street extending to the water includes the note "public launch". He felt water access was a goal of some of these.

Chair Farber felt they needed to have extra public notification if they choose to do anything other than maintaining the status quo.

Mr. Poore didn't feel there would be time to do anything except the status quo between now and September. He recommended that they draft a resolution to direct further steps at the same time they take action on the extension.

Chair Farber pointed out that these are not the only paper streets; Atty. Magnacca said they are dealing with the paper streets that existed at the time the statute was passed in 1987. Subdivisions that have been created since that time are subject to a strict 20-year deadline; after that 20 years, those paper streets expire and there is no extension.

Chair Farber asked about the town's process regarding paper streets that expire automatically with no extension; Mr. Reynolds said the town doesn't have a process.

Atty. Magnacca clarified that this would be the last 20-year extension allowed for these 35 streets by law. No further extensions would be permitted.

Item 7 Order to approve a supplemental appropriation and transfer in the amount of \$185,574 from the Subdivision Inspection Special Revenue Fund to the Fire Department Vehicle CIP fund.

Chair Farber said this appropriation would allow them to purchase the fire truck without borrowing. It was presented to the Finance Committee during the budget development process.

Mr. Poore said this order is to clarify this action for the auditors; it was reviewed and accepted by the Finance Committee.

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

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

Councilor King asked the amount of the fire truck; Mr. Poore said it was just under \$1 million.

Item 8 Order to approve a supplemental appropriation and transfer in the amount of \$70,000 from unassigned fund balance to the Street Lights Capital Improvement Fund to acquire all street light fixtures on utility owned poles, such fixtures to be transferred from Central Maine Power to the Town of Falmouth.

Mr. Poore said the current ROI analysis shows a payback of 3.6 years. Part of the cost is the purchase of the existing system; this is required by the regulations. The utility has to install fuses in the street lights in order for the town's contractors to work on the lights. The town's consultant, RealTerm Energy has done a comprehensive system audit of all the street lights. The Town will use parts of the existing system, especially the mast arms. The next step is to carefully evaluate fixture options, including system controls and light quality. In order to put out sample lights for the public to evaluate, the utility is requiring the Town to commit to purchasing the system. This action would allow the Town Manager to sign a letter of intent to purchase the system.

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

Councilor King moved the order; Councilor Hemphill seconded.

Councilor Kitchel asked how the Town would evaluate the new LED lighting and its impacts. Mr. Poore said the color of lighting doesn't usually have much of an effect in a commercial setting. All the lights along Route 1 are LED. Also, the advanced control settings available now are very impressive. The Town has one for the lights along the Martin's Point Bridge.

Motion carried 6-0.

Item 9 Discussion of next steps regarding Brown Property on Foreside Road.

Chair Farber explained that the ad-hoc group was going to meet one more time to finalize their recommendations, but they haven't had a chance to meet. She suggested assigning this task to PACPAC at this point, since they are coming to the end of the Council year.

The Council agreed to assign the task to PACPAC.

Item 10 Order to go into Executive Session pursuant to the Laws of Maine to discuss the Town Manager's employment contract, pursuant to 1 M.R.S.A. § 405 (6) (A).

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

The Council entered executive session at 9:01 and did not return.

Respectfully submitted,

Melissa Tryon
Recording Secretary