

**Town Council Meeting
DRAFT Minutes
May 19, 2014**

Roll Call

Councilors Anderson, Goldberg, Farber and Pierce were present and answering roll call.

Councilors King and Mahoney arrived late.

Councilor Orestis was absent.

Item 1 Order to authorize the Town Manager to execute an Easement and Relocation Agreement for a natural gas pipeline.

Chair Pierce opened public comment.

Peggy McGeehee of Perkins Thompson, representing Unitil, explained that the Maine Turnpike Authority (MTA) is repairing the turnpike bridge. The MTA has requested that Unitil's pipeline be relocated away from the bridge. A 40 foot stretch of it would be moved into the conservation easement; the easement will not allow for surface disturbance. The conservation easement in that area is held by the Town but the land is owned by the Land Trust.

Public comment period closed.

Councilor Farber moved the order, Councilor Goldberg seconded. Motion carried 4-0.

Item 2 Order to approve property tax abatements for 8 Bridle Path, Tax Map U69 Lot 121, in the amount of \$123.57 for 2012 and \$118.86 for 2011.

Public comment period opened; no public comment.

Councilor Goldberg moved the order; Councilor Anderson seconded. Motion carried 4-0.

Item 3 Order to approve a supplemental appropriation and transfer in the amount of \$50,000 from Unassigned Fund Balance to expand the scope of the new railroad crossing bridge at River Point.

Public comment period opened.

Councilor King arrived at the meeting.

Ted Asherman of Falmouth Road serves on the Land Trust and is a member of the Conservation Corps. He has spent a lot of time working on the River Point property. He argued for a 10' bridge for building maintenance, removal of the house, trail building, and maintenance. Maintenance needs on this property are different from those on other town-owned properties. The aluminum bridge on the property will need to be maintained as well. This property is totally bound for access. There are rivers on three sides, with the railroad on the fourth. The only access is across the bridge. There is no access at Leighton Road, since you can't get across the river. There is no crossing anywhere between the existing bridge and the Presumpscot. There was a place where tractors could get across before the new railroad track was laid,

but the railroad has now dug trenches to prevent that. He felt it would cost them \$3,000-5,000 any time they wanted to cross the railroad tracks with a tractor. This property has structures; the barn and the footbridge both need maintenance and the other building needs to be demolished. The maintenance plan calls for them to maintain the unique habitat on the site; they need a large tractor to do that every year on a rotating basis. Other than Community Park this property is the most used property in Town and it didn't cost the Town anything. \$50,000 is a small price to pay.

David Gagnon of Field Road discussed the railway-caused fire in Old Orchard. If your property abuts the railroad, fire is a risk. He has fought fires like that in the past himself.

Councilor Mahoney arrived at the meeting.

Public comment period closed.

Councilor Anderson raised a point of order; he felt this agenda item was in violation of Council rule 16b which provides for reconsideration of a decision the Council has already made within one meeting of the decision. The original motion was made on April 16, and the discussion at that meeting concerned a 6' versus a 10' bridge. He said the Council voted at that meeting for a 6' bridge. Councilor Mahoney moved to reconsider that decision at the April 22 meeting, but that motion was defeated.

Councilor Anderson moved to withdraw the agenda item because it is in violation of Council rule 16b. This motion does not require a second, and is ruled upon by the Council Chair.

Chair Pierce's ruling was that, under the strictest reading of the rules, having this item on the agenda violated the rule.

Councilor Farber moved to appeal the Chair's ruling; Councilor King seconded.

Councilor Mahoney raised a procedural question – the point of order needs to be made at the time of the infraction, which was technically at the last meeting since this item was on that agenda prior to the meeting being adjourned. He felt it should have been raised at the outset of that meeting, and not when the item came up, in consideration of people who were present for the item.

Councilor Goldberg said the order being considered is for \$50,000; the order on April 16 was for \$450,000. These are two separate orders. Councilor Farber agreed.

Chair Pierce felt they were connected, as they are a continuation of the same discussion.

Councilor Goldberg said the orders are written for two separate appropriations for two separate amounts. He felt these were not a continuation for reconsideration.

Councilor Farber felt reconsideration is a rehashing of the same amount and the same thing. The rules are written for guidance for the Council, are for the Council's benefit, and are only enforced by the Council. There appears to be new information before them, that was not available on either the 16th or the 22nd. As a matter of practice they have information brought to them that is in addition to decisions they have already made. This year they have had items that have come before them multiple times, quiet zones for example, in which they review new information. They have to look at the context in which these things happen. For them to not even discuss new information that is presented would be a mistake; she didn't think that is what the rules are asking them to do.

Councilor King agreed with Councilor Farber; she didn't want to use these rules to shut the door on what could be a good plan for the Town as a whole. The Conservation Commission has developed a much more substantial rationale for the 10' bridge.

Councilor Anderson pointed out that Councilor Mahoney's original motion to reconsider was perfectly valid and timely. These are not guidelines, but rules. The only reason the dollar amount is different is because they have already moved a portion of the total; if they discuss this they would be having the same

discussion they had on the 16th. He didn't feel there was any new information that has been presented since the first decision.

Councilor Goldberg felt "reconsideration" would be to discuss whether to spend the money at all. He wondered whether the question to append an additional \$50,000 is really reconsideration. He would rather debate the merits of spending the money rather than a procedural question.

Chair Pierce recused herself from the vote on the appeal of her decision.

Councilor Goldberg called the question.

Motion carried 4-1 (Anderson). Chair Pierce's ruling was overturned.

Councilor Mahoney moved the order; Councilor Farber seconded for purposes of discussion.

Councilor Farber wondered during the initial debate what public vehicular access would do to the property. She was concerned that vehicular access would increase and threaten the fragile property. She has learned that an easement could be laid on the bridge, held and enforced by the Falmouth Land Trust (FLT), to limit public vehicular access. FLT has agreed to a \$5000 contribution towards the expansion of the bridge, so she would amend the order to lower the amount to \$45,000.

Mr. Poore said that Tom Hanson, FLT's attorney, suggested the easement on the bridge itself. This easement would survive as long as the bridge is there. If another bridge replaced this one, the easement would go away. The intention of this would be to preserve the value of the property for future mitigation needs. If this is a condition of the wider bridge, he can review it with the Town's attorney.

Analiese Larson, Executive Director of FLT, discussed the easement on the bridge. She said they would move very quickly to get easement language approved and executed if the Council approved this tonight. She confirmed their commitment to a \$5000 contribution for the bridge.

Councilor King asked if the easement language would come back to the Council for review; Ms. Larson said it would.

Mr. Poore asked for guidance on what they would like to see in the easement if that was a condition of their approval. His goal would be to get this back to the Council quickly.

Councilor Goldberg has said in the past he equates acquiring new open space with spending money on improving the property they already have. Spending money on River Point to make it more accessible is the same as acquiring a new property. In the past they have had good success raising funds to assist in the purchase. He asked if anyone has looked at raising \$45,000 so that the Town doesn't have to fund it.

Bob Shafto, Open Space Ombudsman, said they haven't. There are grants available for conservation, but few of them would have a priority for this sort of thing. The application deadlines for this type of project are either past or will not come up until this fall. He didn't think this type of proposal would catch a funder's eye.

Councilor Goldberg wondered about a private fundraising effort.

Mr. Gagnon said he looked at that a little bit, but he didn't get very far. The people he spoke to felt that, since the Town got the land for free, the Town is obligated to maintain it. He urged them to move quickly on the plan; they got good bids, and those quotes could go up quickly if they don't take advantage of them.

Councilor King asked about the other prospects.

Parks and Community Programs Director Lucky D'Ascanio said she reached out to a non-profit and two businesses. She can continue to follow up on those.

Councilor Farber pointed out that the federal funds they accepted for the school property years ago cost them when they wanted to sell that property. She worried that they would spend a lot more than \$45,000

in the future on either taking the abandoned building down, repairing the aluminum bridge, or some other unforeseen event. She didn't want them to be penny-wise and pound-foolish.

Councilor Anderson asked if they are relinquishing control of access to the property if they sign an easement over the bridge to FLT. He also asked how the aluminum bridge was built if there was no access over the railroad bridge. He wondered about the referenced pedestrian access from Falmouth Road.

Councilor Mahoney said the easement language would dictate its terms. He felt sure the Town would not cede any rights of access to the property.

Chair Pierce pointed out that they were able to drive a truck over the current bridge until very recently.

Mr. Asherman said all the equipment and materials for the aluminum bridge came over the current bridge before the narrow top was put on it. He said there is no way to get to River Point without going across the river or across the railroad via the aluminum bridge. There is no vehicular access from Falmouth Road.

Councilor King pointed out that this property has maintenance needs, and those have been justified. She felt this would lead to a better product.

Mr. Poore read from an earlier memo that stated that there were two access points to the property: one across the railroad bridge and another was a ground level railroad crossing, which was on paper only and did not have railroad approval.

Councilor Goldberg said the access point from Falmouth Road is a foot trail. You could not bring any heavy equipment in that way, as you would either have to cross the aluminum bridge or the river.

Chair Pierce felt the property was acquired to preserve recreational use and originally supported the 6' span to protect it from development. She didn't feel a strong case was made for it on April 16. She thought it had been better articulated since then. She felt that, in the long haul, it is smarter and more fiscally responsible to build a bigger bridge.

Councilor Anderson felt a 6' bridge was adequate, even though it isn't ideal. They can manage and use the property with the 6' bridge.

Councilor Mahoney supported the motion. He felt this was best for the Town.

Councilor Goldberg wants the Town to get the absolute maximum value out of its open space. If spending 11% more allows them to make this parcel move valuable to the citizens, he is in favor of it.

Councilor Farber moved to amend the order, to lower the amount to \$45,000, conditioned on an easement that comes back to the Council for review and approval, and that staff continues to follow up on private donations; Councilor King seconded.

Mr. Poore explained that the Town needs authorization to spend the money for the bridge, no matter the source; the order should be \$50,000, with a transfer of \$45,000 from unassigned fund balance, and \$5,000 from other sources.

Councilor Farber withdrew her motion.

Councilor Farber moved to amend the order to approve a supplemental appropriation of \$50,000 to expand the scope of the new railroad crossing bridge at River Point, and a transfer in the amount of \$45,000 from Unassigned Fund Balance, with \$5,000 to come from other sources. Such order is contingent upon the negotiation of an easement for the bridge with the Falmouth Land Trust that comes back to the Council for review, and that staff continues to follow up on private donations for the project. Councilor King seconded.

Motion carried 5-1 (Anderson).

Amended motion carried 5-1 (Anderson)

The Council discussed the easement. Councilor Farber said that this should be limited to town vehicles and utility vehicles; vehicle function, quantity, length of time, and simultaneous vehicles on the site all need to be limited. Councilor King's goal was to preserve the land; she wondered about allowing handicap access.

Item 4 Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider the acquisition or use of real estate, pursuant to 1 M.R.S.A. § 405 (6) (C).

Councilor Goldberg moved the order; Councilor Farber seconded. Motion carried 6-0.

The Council entered executive session at 6:15 pm.

Adjourn

Councilor King moved to adjourn; Councilor Anderson seconded. Motion carried 6-0.

Meeting adjourned 7pm.

Respectfully submitted,

Melissa Tryon

Recording Secretary