

Town Council Meeting Draft Minutes August 27, 2018

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

Roll Call

All Councilors were present and answering roll call.

Pledge of Allegiance

Chair Hemphill led those present in the Pledge of Allegiance.

Item 1 Public Forum

Michael Doyle, of Portsmouth NH, spoke about a report on the payroll status of five area school departments. He said that Falmouth is the highest paid school department in the state and he asked why. He said Dan O'Shea, school business manager, is paid \$68,000 more than the business manager in Scarborough. He said he struggles with getting information from town employees. He said the Council should look at what is happening at the school department.

John Winslow, of Gray Road, thought a finance director that oversees \$38 million would have a MBA degree at least. Mr. O'Shea has a degree in geology. He found that odd. He said that the Council voted on a resolution in April to hold a public forum on high-density residential zoning before October 1. There is a proposal for a residential project currently before the Planning Board for 104 units. He asked about the plans for that public forum. The Gray Road can't handle the traffic that is on it now; that housing project will only add to the problem. He urged the Council to consider a moratorium on development in that area until they get Gray Road figured out. He suggested a master plan based on the Route 100 vision plan.

Item 2 Consent Agenda

- **Order to approve the minutes of the July 9, 2018, Town Council Special Meeting**
- **Order to approve the minutes of the July 23, 2018, Town Council Meeting**

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

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

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

Town Manager Nathan Poore said the Ordinance Committee and CDC have scheduled their first meetings for the year. In response to Mr. Winslow's comments, he reported that staff are developing a strategy for a public zoning discussion for the Council for the fall.

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

Councilor Ferrante said the committee is recommending the appointment of Brian Bakke for FEIC. Otherwise, the committees are full.

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

Councilor Asherman moved the appointment; Councilor Kuhn seconded. Motion carried 7-0.

Item 5 Public Hearing on amendments to the Code of Ordinances, Chapter 8, regarding temporary signs.

Councilor Kuhn thought the ordinance addresses the content neutral requirement but was concerned with the ban on signs in the median. The justification for that ban has been maintenance of the median, but she didn't think that was a strong enough reason to constrict free speech. This rule will be different than other neighboring towns and the Town Clerk will have to spend a lot of time explaining it. She also thought this would open the Town to the risk of being sued.

Mr. Poore said staff's recommendation supporting the ban stands, but the Council can overlook it. He said policies vary from town to town all the time.

Councilor King said there are signs in the roundabout on Longwoods, and she felt that they are distracting to drivers. She felt it was defensible to prevent signs from being dangerous to look at while driving. She thought that could include medians.

Councilor Kuhn agreed that signs shouldn't obstruct sight lines or create a danger. Councilor Svedlow said there is a provision that allows signs that create a traffic hazard to be removed.

Councilor Ferrante said the CDC discussed this quite a bit, and brought it to committees, staff and the Council for feedback. She didn't think it was true that Falmouth would be the only town to restrict signs based on location. They received more feedback supporting prohibiting them in the medians, both to make it easier for Public Works and to address controversy about the signs. The signs are a nightmare in the median, and it didn't seem like a big ask to have them stay on the side of the sidewalk.

Chair Hemphill pointed out that the signs would still be allowed in the Route 1 corridor, just not in the esplanade or in the median.

Councilor Cahan asked if the signs would be on private property or in the right of way. Chair Hemphill said the right of way extends beyond the sidewalk; the signs would still be in the right of way.

Councilor Cahan agreed it might be difficult for people to know where to locate the signs, and she didn't want to see the Town in a legal fight over free speech.

Councilor King asked if Town Attorney Amy Tchao has reviewed the proposed ordinance; Councilor Ferrante said she has.

The Council discussed how to address this concern. They decided to continue with the public hearing on the proposed ordinance and send the concern about the prohibition on signs in the median back to CDC for further study.

Chair Hemphill opened the public hearing.

Michael Doyle of Portsmouth, NH spoke about the Supreme Court decision in *Reed v. Gilbert*. He argued that they could mandate that signs must be located in places where people couldn't see them which would then limit free speech.

Charlie McBrady of Foreside Road thought it was important to realize the power of freedom of speech. The signs are sometimes annoying, but they are temporary. He felt people should be able to place the signs on public land. They can limit the size of the signs, but they can't limit speech.

John Winslow of Gray Road said there are limits on the size of signs, and how close they can be from the curb. He thought they could address the safety issue by limiting signs within a certain distance of intersections

or in the roundabout. He agreed that they can be a distraction in those areas, but he said they should not limit them in other areas.

Chair Hemphill closed the public hearing.

The Council did not schedule an order for this item. They asked CDC to review it at their earliest opportunity.

Item 6 The Council will consider the following orders pertaining to the proposed renovation and expansion of the Falmouth Memorial Library:

- **An Order to authorize the Town Manager to execute a Memorandum of Understanding with the Falmouth Memorial Library Association;**
- **An Order authorizing up to \$500,000 of the Town's Bonds to finance one-half the additional costs to renovate and expand the Falmouth Memorial Library, to be matched by funds to be provided by the Falmouth Memorial Library Association (the "Bond Order");**
- **A vote to recommend passage of the question at the election; and**
- **An Order Submitting the Falmouth Memorial Library Order to Referendum.**

Marsha Clark, President of the Library Board, presented a comparison of Falmouth's library to other surrounding towns. Falmouth has the largest population of the towns in the list and the smallest library in terms of square footage. It also has the highest program attendance, visits, circulation and the second highest per capita usage after Cape Elizabeth, which saw an expected bump in usage after a recent expansion. Falmouth Memorial is a heavily-used library; that has not changed and will continue. She spoke about the number of programs the Library hosts; they have had to double some of their programs because they are full. Right now, they can't offer some of the programs they want, to benefit young families with early-reading and STEM instruction. She spoke about the changes that have happened since they received their original cost estimates in 2014. If they had been able to build in 2016 when some other libraries in the state expanded, the costs would have been much lower, and they would have come in on budget. The proposed design, which they have worked on for 4 years, was based on community input and needs. It is designed to be flexible to meet the needs in the future, and to be efficient both to keep costs down and to prevent them from having to hire more staff. They have reviewed their options; choosing a different location, waiting for the market to improve, or creating a different design all come with cost and uncertainty. They are following the advice of their professionals, who have been in the business for decades. She said the current building is decaying; things keep breaking down and the costs to address those issues keep adding up. They continue to review all the elements to see where they can save more money. Any more reductions they make will be split between the Town and the Library. She said this has been a five-year process for them; they are not rushing, and they feel going on the ballot in November is the right way to go.

Chair Hemphill said there have been questions about how the timing on this will work with going to referendum in November.

Mr. Poore explained that the deadline for the Library to complete its fundraising is very important; it needs to be coordinated with going out to bid and with the audit of the pledges. They determined that this deadline needed to be January 31, 2019 in order to go out to bid before spring. The Library would go out to bid and complete the pledge audit at the same time. They wouldn't be able to sign a contract and commence the project until the audit was complete. There was a lot of discussion about how to draft the MOU to address this additional section; the formula now mirrors the language from the previous version, with 50% cost sharing between the Town and the Library. Any cost savings the Library finds would be shared equally with

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the Town. He discussed the stormwater waiver that was granted in 1994; the Planning Board at that time granted the waiver that the Library requested. There were no water quality standards at that time, and the standards are different today.

Councilor Cahan asked what it would cost to meet the 100-year storm standards. She was concerned that the library would be at risk given the increase in strong storms. Mr. Poore wasn't sure. He didn't know if there was consideration for small lots to meet that standard; he felt they would rely on the public infrastructure.

Councilor Cahan asked about the infrastructure in the area. Mr. Poore said there are recent stormwater plans for that catchment area. The concern in that area is more about water quality not flooding.

Chair Hemphill opened a public comment period.

Michael Doyle of Portsmouth, NH didn't agree that Falmouth needed a library expansion. He argued that young people do not use libraries anymore. He argued that the Town could purchase a Kindle for everyone in town for \$750,000 and they would have all the books they ever wanted. He thought the entire library system worldwide would go digital in the future. He wondered how many people in the town expressed a need for a bigger library; he argued that it was only a few elitists and not the majority of the town's population. He said this was a waste of time and waste of money.

India Broyles of Blackstrap Road is a former trustee of the Library Board and served on the capital campaign; she said the plan that was approved was both forward-thinking and innovative. She said the request for more funding does not come because of new ideas for the project but because of the high cost of materials and labor. She supported the referendum as a wise investment in the Library and the Town.

John Winslow of Gray Road felt they have to change course to make this work. He was disappointed that they aren't looking at the Tidewater Farm property. There is a driveway that serves the former Finks Farm. They could do a forward-thinking, energy efficient building there with geothermal or solar, with partners like UMaine and the Land Trust, and have a community resource center. He argued that the library is a book repository; this is the electronic age. He did not support going to referendum.

Laurence Leonard of Amerescoggin Road said he is a heavy library user. He said there is more to the library than books. He opposed the bond and referendum. The library analysis is 10 years old and times have changed. He wondered if they need a bigger library, or a smaller library. They don't know what their current needs are. He said they need a new analysis. He didn't understand why a new assessment would not be feasible. He agreed that a new, significant opportunity has come up with the Town/Tidewater proposal. It is a beautiful spot. He said if they sold the land where the library is currently located, along with the adjoining lot, it would be enough money that they wouldn't have to go to referendum and they could have a new building instead of a renovation.

Bob Hunt of Foreside Road said in 2014 the townspeople were told the library would pay anything over the \$5.61 million that was approved in the original bond. He argued that this request dishonors the Library's word, the Council's word, and the good faith of the voters in 2014. There is nothing unusual or unfair about modifying a building project due to changes in the costs. He asked what would happen if this \$500,000 wasn't enough. It is time to bring this project to a close, to modify it to fit whatever \$5.61 million will buy. That is the financially prudent thing to do. He supported the library and has for decades. His mother was a trustee and so was he during the 1993 expansion.

Ellen Conway of Mountain Road supported the Library's expansion project and urged the Council to place the referendum on the ballot. She has worked for the library for almost 20 years. The staff has faced some difficult moments in the last few years. There have been harsh comments in the media; accusations that this process has been rushed and the design is excessive. She said that every dollar the Library spends is considered carefully, and they are trying to make as many cuts as they can. They are trying to get as close as \$5.6 million as they can. It would be irresponsible to ignore all the money that has been dedicated to this

process already. They have an obligation to build the building that their donors and the voters approved and were promised.

Heather Holdredge of Sherman Drive said the library serves many purposes for her family and it has changed over the years. The Library has always been about the Falmouth community. They have welcomed community input and dialogue every step of the way. They are open to everyone in the community and it is important to allow the community to speak. She urged the Council to send this to referendum.

Peter Goffin of Lincoln Farms Road said he has been involved with the Library for 10 years. He is impressed with the expansion that Yarmouth has made to their library and dismayed that Falmouth has not done the same. He argued that 92% of college students prefer printed books over e-readers. They are not here to debate the expansion of the library; those discussions were held years ago. The comparable towns that were highlighted earlier tonight have all expanded their libraries. He urged the Council to allow the bond to go to the voters in November.

Joanne Duran of Harriette Street felt this was a simple question. This library has been a resource of the town, serving all the members of the community. The last referendum was supported by a majority of the voters; she felt this question should be put to the voters so as many citizens of Falmouth as possible can have a voice in making this decision.

Chair Hemphill closed the public comment period.

Councilor King agreed that the MOU stated that they would not exceed \$5.61 million, but also said that MOU's can be amended. These increases do not come from change orders but are unanticipated increases. She liked that the proposed language mirrors the previous arrangement.

Councilor Svedlow didn't think this was a question of being for or against the Library; he said the question is between a \$5.61 million library, or a \$6 million library. He felt there are people who like the Library but don't approve of this action.

Councilor Cahan said the question is whether this should go before the voters. Last week, she wasn't sure it was ready. While it is a short time, and there are things that still could be done, she has done more research into the pre-bidding the Library did and was more comfortable with the number the Library is reporting. She also learned about the programming the Library hosts; the Library is more than just books. She would still like to see an updated analysis on the needs for the Library. She thought that could be done without slowing down the process. She reviewed the proposed design, and the flexibility that is built into it. She said she has enough information to say that it is ready to go to referendum, so the voters can decide.

Councilor Kuhn agreed; she thought it was important that the cost increase is not related to new design elements, but due to market issues and unanticipated site costs. For that reason, she felt it was okay to go back to the voters. She thought it was important to continue looking at this to see if there are ways to lower costs, perhaps with TIF funds. She thought transparency in this project is important. She said the Council's Library liaison, the Town Manager and the Town's Finance Director will attend the Library's expansion meetings.

Mr. Poore said the Library has requested an amendment to paragraph 7a in the MOU, regarding the draw procedure. They are asking to eliminate the limit of only one draw-down per month. This would allow them to take advantage of any cost reductions that might be available by having a more efficient draw-down system. He supported the request.

Jim Saffian, Bond Counsel for the Town, explained the process for including the Council's recommendation in the referendum language.

Mr. Winslow asked if the original \$2.8 million has gone out to bond yet. Chair Hemphill said no. Mr. Saffian said they would have two sources of authorization; when the bonds are issued they would be issued up to the combined amount.

Councilor King moved order 22-2019, to amend the Memorandum of Understanding, adding the date of January 31, 2019 to section 5, and striking “*No more frequently than once a month*” from section 7(a); Councilor Kuhn seconded. Motion carried 5-2 (Svedlow, Ferrante).

Councilor Asherman moved order 23-2019, the bond order, and waived the reading of the order; Councilor King seconded. Motion carried 5-2 (Svedlow, Ferrante).

Councilor Asherman moved to amend order 24-2019 to add “that the order be adopted and reflect the vote of the Town Council to submit the question to referendum.”

Councilor Cahan seconded. Motion carried 7-0.

Chair Hemphill moved order 24-2019 as amended; Councilor King seconded. Motion carried 5-2 (Svedlow, Ferrante).

Item 7 Update on efforts to curb the Browntail Moth infestation in Town and a Resolution requesting a declaration of a public health nuisance from the Maine Bureau of Health.

Mr. Poore said, after an increase in Browntail moths last year in the east side of town, the Town conducted a public forum last fall and based on public support expressed at that meeting undertook a street-side spraying program this spring to limit damage to street trees and help address public health issues. The Town commissioned an inventory of nests last winter; the results showed that the infestation was spreading west. A regional meeting, including affected town managers and representatives from Cumberland County and GPCOG, was held last month. They attendees agreed to three approaches: work to support UMaine research into a fungus that kills the caterpillars; host regional forums this fall to continue education efforts with the public; and to explore the possibility of aerial spraying. In order to conduct aerial spraying, the Maine Bureau of Health would need to declare a public health nuisance. This resolution would preserve the option of an aerial spraying program but would not commit the town to such an action. A decision would have to be made by fall.

Councilor Svedlow moved the resolution; Councilor Asherman seconded.

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

Councilor Cahan said she would be opposed to spraying as anything other than a last resort. She wanted to make sure that they would not consider that without making sure that the public was thoroughly notified and there was research into the effect on pollinators. Mr. Poore agreed. There would be a lot of research necessary since no town has done aerial spraying since 2002.

Councilor King asked if they would know if a collapse had happened before they made a decision on a spraying program. Mr. Poore said no; if the fungus was present it would happen in the spring and the spray would be bid out in the fall.

Motion carried 7-0.

Item 8 Introduction of an ordinance to establish a moratorium on medical marijuana caregiver retail stores.

Ethan Croce, Community Development Director, explained that the Town has an existing moratorium prohibiting retail marijuana establishments. In the time since that was adopted, staff have become aware of ambiguities in state law that have allowed for caregivers to open retail stores for medical marijuana. The proposed moratorium would allow the ad-hoc retail marijuana committee to evaluate whether to regulate all retail stores or just recreational stores. The moratorium would be in effect for 180 days and would be take effect as of August 3.

The Planning Board MRA hearing may not be required; if it is, it would be held at the October meeting.

The Council's public hearing was scheduled for September 24.

Item 9 Order to expend \$10,000 from the Long-range Planning Special Revenue Fund and to accept \$10,000 from the Maine Turnpike Authority to said fund to conduct a development feasibility analysis at the West Falmouth Crossing Shopping Plaza.

Mr. Poore explained that the property is owned by two entities. Three years ago, when the MTA issued plans for upgrades at Exit 53, they planned to eliminate the park & ride. They explored the surrounding area and couldn't find an alternate site. The Town assisted the MTA in looking for options and identified that the area where the bottle redemption shed is located could hold 8-10 spots. That solution is no longer acceptable to the property owner. The MTA has said they are still interested in a park & ride in the area and are willing to construct it. At the same time, the property owners expressed discontent with the bus stop location. There is an area on the site that was left open but the only way to analyze whether there is opportunity to open the master plan, create some infill and locate the park & ride on the site is to do a feasibility study. MTA has agreed to fund this study but since this expense is not budgeted the Council needs to approve it.

Councilor Ferrante clarified that master planning was done from a development standpoint and the owners of the property are interested in participating in what happens to their land. The CDC discussed this area last year, and she thought it would be helpful to incorporate some of the things they discussed in this process.

Mr. Poore asked if the staff should bring the study to the CDC first before bringing it to the Council. The Council agreed.

Chair Hemphill opened a public comment period.

John Winslow of Gray Road opposed the Town spending any funds or using staff time for any purpose that benefits a private developer and the MTA. The proposed area is a gully and is not suitable for parking. The developer receives \$300,000 a year from the TIF. He thought the bottle redemption shed and silver bullets were located on that site because that area was set aside for municipal use in the original master plan. The developer wants to kick the Lions shed out; it is poor community relations. Developers are coming in and dictating to the Town what will happen, and he felt this is wrong.

Public comment period closed.

Councilor Svedlow pointed out that this is a pass through of MTA funds for a parking lot and won't use Town tax dollars. Chair Hemphill said it is for a feasibility study, not the parking lot.

Mr. Poore thought the shed area was supposed to be municipal use too, but the developers pushed back and showed documents proving that it wasn't. The Town Attorney reviewed it and confirmed that the Town has no rights there. This is about trying to catch the developers' interest. He said the entity that receives the TIF credit is not this property owner, but the original developer, and it is compensation for bringing sewer out to this area.

Councilor Asherman asked why the MTA didn't pay for this itself, instead of passing it through the Town. Mr. Poore said the MTA works with partners. He agreed there is a gully but said there is a strip between the gully and the parking lot where they might be able to locate parking spots.

Councilor Cahan thought this is a good location for infill.

Councilor Svedlow moved the order; Councilor Kuhn seconded. Motion carried 7-0.

Item 10 Order to authorize the Town Manager to execute an agreement between the Town and Pete Wormel (dba WWW) of Harmon's Hamburger on Route 100.

Mr. Poore said staff have been working with Harmon's Hamburgers on access issues as a result of the Route 100 work. The Town is working on this because the State will only compensate property owners for land that is taken. If there is no accommodation for parking out back and the curbing continued straight across, this property would have to be condemned. The State didn't have the capacity to negotiate a multi-owner deal. He said Mr. Wormel and Mr. Hothem have a tentative agreement to allow access to the back for parking. Using public funds for private property is allowed in this instance because it is a public improvement. It is a safety enhancement on Route 100. The \$25,000 includes expanding the existing gravel parking, a new rear entrance, access from the sidewalk, and grassing in the paved area in front. There is no compensation for either property owner. This expense will be built into the Route 100 project and the Town agreed to act as the agent for the property owner and bring this to the Planning Board, which the Town did in a similar situation for property owners during the Route 1 project.

Councilor Ferrante asked if there were any estimates.

Theo Holtwijk, Director of Long-range Planning, said they consulted with the engineer and Public Works Director to determine how much work would be involved. He has the cost estimates.

Councilor Ferrante wanted to review the cost estimates.

Councilor Kuhn asked if there was precedent for spending public funds on private land for safety issues; Mr. Poore said yes, the Town did it on Route 1.

Councilor Cahan said, if they didn't do this, they would have to buy the whole property if they want to do any of the improvements along the front. Mr. Poore said yes, but that wasn't a realistic option. If they didn't do this, they would leave a gap in the sidewalk improvements and leave the existing conditions. The project wouldn't be well framed if they leave a gap there. He said spending \$25,000 to get this level of access management and safety improvements will result in a dramatic improvement.

Chair Hemphill opened a public comment period.

John Winslow of Gray Road said Mr. Poore had answered his questions as to why the Town was involved here on private property. He said this work is not going to be started this fall. He asked that the agreement be read into the record, so everyone is familiar with the language. He didn't think \$25,000 was enough compensation for Harmons to do what needs to be done. He wanted to make sure there are no surprises when construction starts.

Pete Wormel, owner of Harmons Lunch, said his understanding was the Town was negotiating with him instead of the State, but it was State funds. He said he is losing all the land in front; the State will take all of his parking, and all of his access. It will be safer coming in to that road. He said Mr. Hothem is giving him and Ms. Akerson access forever, for free.

Public comment period closed.

Councilor Ferrante said the Route 100 Committee discussed this; there is a definite safety issue here and she supported the agreement, but she wanted more clarity on the numbers.

Councilor Cahan moved the order; Councilor Ferrante seconded. Motion carried 7-0.

Item 11 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 Svedlow moved the order; Councilor Asherman seconded. Motion carried 7-0.

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The Council entered executive session at 10:08 pm and did not return.

Respectfully submitted,

Melissa Tryon
Recording Secretary