

# **Town Council Special Meeting**

## **DRAFT Minutes**

### **September 12, 2016**

The meeting was called to order at 7:03 pm.

#### **Roll Call**

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

Councilors McBrady and Kitchel were absent.

#### **Item 1 Public hearing on a proposed zoning amendment to enact contract zoning.**

Councilor King explained that the CDC drafted the language to enact contract zoning, which is designed to address the unique nature or location of proposed developments when current zoning is inadequate. They feel that this could work well to protect the interests of the Town and accommodate appropriate development.

Chair Farber opened the public hearing.

Peter Kennedy of Carol Street said he initiated the first contract zone in Cumberland in 2006. He didn't feel the proposed language was sufficiently flexible. The goal should be for the developers to work with staff to create something that is new, different, and a benefit to the developer and the Town. He was concerned with the use of the term "consistent", which means the same. He would like to see more clarity and better definitions.

Public hearing closed.

Councilor Svedlow would be interested with the definition of "consistent" in this context.

Amanda Stearns, Community Development Director, said that language is part of the three statutory provisions that are required for contract zoning; it comes from the State, so the Town does not have flexibility in this area. The Town Attorney prepared a memo regarding contract zones. The statutory provisions include consistency with the comp plan, consistency with existing and permitted uses in the district, and that the conditions and restrictions within the zoning agreement must be related to the physical operation or use of the property. The Town added a fourth requirement that the developer demonstrate that there is a public benefit that would not be available under current zoning. According to the land use court, determining consistency with the comp plan is up to the Council; this is intended to give communities' latitude. In response to Councilor Hemphill, Ms. Stearns said this is an additional method for the Town and developer to use to make some changes to the ordinance. The contract zone is not intended to comprehensively rezone a property; that should be done by making a zoning amendment. This is an additional tool; it allows a contract between the developer and the Town that spells out what the developer is going to do, and what the Town is going to allow. It is more of a negotiation between the parties.

Councilor King said this is a way to work within the zoning and doesn't make changes to the underlying district. She asked the Council their thoughts about the opportunity for notifying abutters; the issue was raised by the Planning Board.

Councilor Hemphill asked about current practices for notifying abutters. Ms. Stearns said there are statutory requirements for immediate abutters. The Town has some requirements for broader notifications, in the case of wireless towers for example, and they could add extra notice provisions if they chose. They could also put a general notice in the paper to notify beyond immediate abutters.

Councilor King asked if they could decide to expand notice at the conceptual review stage, if they feel that they need more public input.

Ms. Stearns said the CDC's conceptual review is fairly limited in scope. There are multiple opportunities for public review and comment during the approval process at the Council and Planning Board levels, where more detailed reviews are conducted.

Chair Farber said the Council has expanded public notice and input in the past, for proposals that they felt warranted more effort, and they would still have that option. She was concerned that noticing the conceptual stage would mislead the public into thinking that the CDC was reviewing a project that was more complete and that there would be an opportunity for public comment on it, but she saw benefit in noticing the public that there was something being developed.

The Council discussed different ways to notice the public about the CDC conceptual discussions.

The order was scheduled for September 26.

**Item 2 Public hearing on an amendment to adopt the maximum levels of income and expenses for the General Assistance program, Chapter 6, Article 6, Section 6.68, Appendices A-D of the Falmouth Town Ordinance.**

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

The order was scheduled for September 26.

**Item 3 Public Hearing on amendments to the Zoning and Site Plan Review Ordinance Sec. 19-23.11 Master Development Plan Time Limits, in order to extend the Tidewater Master Development Plan an additional one year.**

Councilor Hemphill said this amendment is to provide Tidewater, LLC the time to develop a revised master plan. The Town is still working with the developer and there has been substantial progress. The subcommittee is optimistic that the Town and the developer will work out an effective and improved master plan soon.

Chair Farber opened the public hearing.

Bob Isler of Farmgate Road, a member of the Tidewater Homeowners Association (HOA), said that, in response to the development of the Rivalries restaurant, the Council suggested the HOA install signage on the roads in the development to indicate that some of the roads were private. The HOA designed and almost ordered the signage before they discovered that this type of signage is not allowed in the master plan. Nathan Bateman has assured Mr. Isler that they have added provisions to the draft master plan to allow this signage. He stressed the importance of this signage to the members of the neighborhood.

Public hearing closed.

Councilor King and Councilor Hemphill thanked Mr. Isler for raising the issue. They will look for it in the documents submitted.

The order was scheduled for September 26.

**Item 4 Introduction of an amendment to the Code of Ordinances Div. II-2-3-12.  
*Economic Improvement Committee* to update the charge and membership of the  
Falmouth Economic Improvement Committee (FEIC).**

Chair Farber said this committee was established as a 7 member committee and was expanded to 9 during the work on the Economic Development Plan. Now that the plan is completed the committee no longer needs so many members. They also have some vacancies, and are having a hard time getting a quorum for meetings. They are proposing to reduce the number of members back to 7, and also to change the nature of a quorum to a majority of those currently appointed, rather than the number of seats available.

The public hearing was scheduled for October 24.

**Item 5 Update on current and scheduled road construction projects for 2016 and 2017.**

Jay Reynolds, Public Works Director, presented the list of road construction projects for 2016, 2017, and some that will extend into 2018. He highlighted two state projects that are planned for the next couple years: the installation of a roundabout at the intersection of Middle Road, Longwoods Road, and Woods Road, and the installation of a traffic light at the intersection of Bucknam Road and the I-295 Northbound exit ramp.

Nathan Poore, Town Manager, discussed the changes that were implemented at the intersection of Route 88 and Route 1. There was a federal safety audit that studied Route 1 from the Falmouth/Cumberland town Line to Back Cove. The concerns about this intersection were for traffic, pedestrian, and bicycle safety. He felt the intersection has improved in the last week or so, since the striping was put down. The new design removes the right lane that merged into Route 88 and changes it to a dedicated bike lane. This was done to remove the need for cyclists to ride in the middle of a high-speed traffic lane in order to go straight on Route 1. The police have been monitoring the traffic in this area, and have seen nothing concerning. The Town has petitioned the DOT to reduce the speed leading up to this intersection from 40 mph to 35 mph to help with the turning as well.

Councilor King asked if the DOT was open to altering their standard design for the roundabout and whether there was any more opportunity for public input. She was surprised by the number of streetlights in the proposed design. She thought one of the goals of the roundabout was to reduce the number of lights needed.

Mr. Poore said there were some concerns about pedestrian connectivity for the future. Mr. Reynolds said he felt they would be flexible in their design and that town staff has discussed the lighting with them. The DOT has said they are looking at installing pedestrian scale, low-level LED lighting. They are also reviewing making accommodations for cyclists in the area.

Mr. Poore said this roundabout will eliminate an at-speed right turn, similar to the one at Route 88.

**Item 6 Order to set FY17 real and personal property tax due dates.**

Pete McHugh, Finance Director, said the tax rate was set at \$15.09, just as was budgeted. The valuation came in \$2 million higher than expected. This generated an additional \$37,000 in tax revenue which was added to the overlay on the recommendation of the Assessor. The overlay is a contingency fund to cover abatements granted over the year.

Public comment period opened; there was no public comment.

Mr. Poore pointed out that the Council's authority is to approve the tax due dates; State statute gives the Town Assessor the authority to set the tax rate.

Councilor Svedlow asked what drives the increase to the county rate; Mr. Poore said there were several elements, including payments on the civic center, changes at the state level regarding the regional jails, and changes to regional valuation.

Councilor King moved the order; Councilor Hemphill seconded. Motion carried 5-0.

**Item 7 Update from Town staff on a proposed municipal solar array at the landfill.**

Kimberly Darling, Energy & Sustainability Coordinator, explained briefly how solar panels work and the history of solar energy development in Maine. Net metering was adopted in 1998; a stakeholder group was convened in 2015 to review the standards and propose changes. A bill was introduced but was vetoed by the Governor. The recommendations are now being reviewed. Current rules limit solar installations to 660Kw, and 10 total meters. She explained how the billing works and said that solar can do a good job of offsetting the fees for small scale accounts, but is not as good for medium scale accounts, which are subject to more fixed charges. Financing tools available for solar installations include a 30% solar investment tax credit available until 2019 and accelerated depreciation, but the Town would need a development partner in order to take advantage of these tools since municipalities are tax-exempt. The Town has been investigating the potential for a solar installation at the Woods Road landfill for a couple years. Staff feel that the Town is blocked from moving forward due to the lack of a comprehensive solar policy at the state level and the limit of 660Kw and 10 meters, which prevents the project from being economically feasible. In the meantime, the Town is focusing on smaller projects, including installing solar panels on both Town Hall and the Public Works garage.

Chair Farber wanted to see the Town discuss the limitation on municipalities in this arena with the state reps.

Councilor Svedlow felt it was worth it to continue to look at alternative development agreements. The load is there, the site is good, and the prices have declined dramatically and will continue to do so. If the deal is structured properly, he felt they could be looking at 7 cent power for the Town for 20 years. He explained that the Town could lease the land to a developer to build a facility that would function as more of a power plant instead of a net metering design. He discussed this type of agreement and said this would require a cooperating partner to work with the Town and invest in the project; this is not what the current developers in the state are doing.

**Item 8 Order to approve a supplemental appropriation and transfer in the amount of \$27,850 from Unassigned Fund Balance for the demolition of the abandoned brick house at the River Point Conservation Area property to include asbestos removal.**

Mr. Poore said staff have been evaluating options for the building for 5-6 years, including potentially farming the property, but the house was never in really good condition anyway. They discussed the Fire Department burning it for fire training, but it is brick and is now too unsafe for even that. It is not in the budget, but it is dangerous and needs to come down. There are three pieces to this request: asbestos remediation, demolition and contingency.

Public comment period opened; no public comment.

Chair Farber felt they needed to take care of what they have, and this is a dangerous building.

Mr. Poore said there are several buildings on site, and the others are in usable condition. The building in question is the brick home as you come onto the site.

Councilor Hemphill moved the order; Councilor King seconded. Motion carried 5-0.

**Item 9 Order to appoint a Voting Delegate and an alternate for the Maine Municipal Association's Annual Business Meeting on Wednesday, October 5, 2016.**

Public comment period opened; no public comment.

Councilor Svedlow moved to appoint Councilor King as the voting delegate; Councilor Ferrante seconded. Motion carried 5-0.

**Item 10 Order to authorize the Town Manager to execute a purchase and sale agreement to purchase a portion of a parcel of land, and other property rights, located on Woodville Road, comprising approximately 1.5 acre, referred to on Town Tax Map R03-020 for \$30,000.00, subject to the condition that dogs, motorized vehicles, and mountain bikes will be prohibited and to further authorize the Town Manager to execute all other necessary documentation to legally acquire the property and other property rights should all conditions of the purchase and sale agreement be met in the best interest of the town.**

Chair Farber explained that the Council voted on this parcel on land on August 22 but there was a misunderstanding with the property owner and the approved order was incorrect; the parcel is actually 1.5 acres and the owner had requested several deed restrictions.

Mr. Poore explained the circumstances surrounding the miscommunication with the property owner. The other 1.5 acres is unbuildable, as far as he is aware.

Public comment period opened; there was no public comment.

Councilor Ferrante wondered why the owner was holding on to the remaining 1.5 acres; Mr. Poore thought it was for a buffer.

Councilor Hemphill didn't feel the change in size would change their ability to access the property as originally intended. This amount will still allow for a small parking lot and a trail to access the balance of the Town-owned property. He felt the deed restrictions were unfortunate, but they could evaluate different access points in the future. He felt this was worth it.

Councilor King said the property owner will have to fill in some wetlands to build on this lot; she wondered if that would interfere with their access. Mr. Poore said no, it isn't remotely close to the trail area. His building plans are subject to his ability to get the right permits.

Councilor Svedlow didn't like the deed restrictions.

Chair Farber agreed and was concerned that they are not enforceable, but pointed out that none of this changes the issues with the original boundary survey, which was done by a town contractor. The Town has an indirect role in the problems with this lot, and this is a great opportunity to provide access to a great little place.

Councilor King pointed out this area is wet; motorized vehicles and bikes may be a detriment, and dogs will impact wildlife.

Lucky D'Ascanio, Parks & Community Programs Director, said that snowmobiles on Town land operate at the discretion of the Parks Department. If they are not allowed by deed restriction, they will not allow it.

Councilor Ferrante said she has lost interest in this lot, due to it being half the land and with deed restrictions for the same price.

Councilor Svedlow asked if this fixes the potential issue with access to the first lot. Mr. Poore thought so; he and Councilor Hemphill said the Town has some responsibility to remedy this.

Councilor Svedlow asked if the intention was for the lot to be built upon; Mr. Poore said yes. There is a purchase & sale agreement on the property; the Town will now become a third partner to that.

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Councilor Ferrante asked if the lot is buildable if the Town does not enter into this agreement; Councilor Hemphill said it is.

Councilor King said he could build on this land without this deal, but he would have a difficult time siting a home on the lot without it.

Mr. Poore said it is a 5 acre lot, and is rectangular. While it looks like there should be plenty of land to build on, there is a 50 foot right of way along the property line that pushes off the area of land where someone could build. The resulting buildable area is very close to a steep drop off and wetland. The buildable area is only wide enough for a 17 foot wide home without some serious retaining wall work and excavation. The cost of that work would make the lot much more expensive than a typical lot in this area. This is a direct result of the right of way being set at 50 feet instead of 15 feet, which is partly the responsibility of the Town. This mistake cannot be changed.

Councilor King moved the order; Councilor Hemphill seconded. Motion failed 3-2 (Ferrante, Svedlow). A majority of 4 was needed to approve the order.

**Adjourn**

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

The meeting was adjourned at 9:13 pm.

Respectfully submitted,

Melissa Tryon  
Recording Secretary