

Town Council, March 28, 2016

Item 12 Introduction of a series of zoning amendments to implement Year 1 Comprehensive Plan strategies as identified by the Town Council.

Councilor King said this package of zoning amendments is designed to meet the residential growth goals of the 2014 comprehensive plan. She discussed growth areas, which have or will have infrastructure, are close to amenities, and have denser development. She discussed the CDC's process on this project to date.

Councilor Hemphill discussed the rural/growth boundary map approved by the Council in 2015 and the areas included in each type. Their goals were to maintain the rural character and limit residential growth in the rural areas, offer opportunities for compatible growth in the growth areas, and to provide opportunities for a range of housing types and to increase conformity of existing housing in the growth areas. In the rural areas they make one change to the Farm & Forest District to simplify Accessory Dwelling Unit (ADU) requirements and approvals; make limited changes to the Highland Lake RB District, including adding ADUs, eliminating multi-family and giving it a new name (HL); establish a yearly rural area cap of 26 single family (town wide cap including two-family of 65), and establish a yearly rural area cap of 8 accessory dwelling units (town wide cap of 20). For the growth area, they enable growth compatible with existing neighborhoods by lessening dimensional standards; provide opportunities for a range of housing types by simplifying rules regarding accessory dwelling units, two-family and multi-family units; and simplify the process to enhance existing lots by increasing the number of existing conforming lots through lessening dimensional standards

Councilor Farber discussed the proposed changes to the RA district. They goal is to increase conformity and the opportunity for infill. CDC is proposing to reduce the dimensional requirements for a single-family homes, two-family homes, and multi-family homes by reducing the minimum lot size, minimum lot width, minimum side, front and rear setbacks, and the required net residential area, and to eliminate the minimum unit size. They are not proposing any changes to the current building height limits. She pointed out that most of the properties in the RA district have access to public water and sewer. Multi-family homes would be limited to up to 6 attached units per building. Housing types allowed in the RA, RB and RD districts would include single-family homes, single-family homes with an accessory dwelling unit, two-family homes (two attached units), and multi-family homes (up to 6 attached units). She gave an example of a current, non-conforming parcel; as a result of the proposed amendments it would become conforming and it would be able to be converted to a two-family unit. They are proposing three residential growth districts: RA, RB and RD. The goal of this is to create a transition of density from the densest development in the east (RA) to less dense development in the west, more rural part of town (RD). This also reflects access to infrastructure. They are also proposing to rezone the area around Highland Lake to become its own district, to reflect its unique nature; currently it is RB. They want to remove the opportunity for multi-family development in that area.

Councilor Hemphill discussed the proposed zoning district changes, identifying areas that would be changed. He explained the growth cap recommendations: they would impose a town-wide

cap of 65 single and two family dwellings, 26 of which can be in the rural area; a town wide cap of 24 multi-family dwellings, with none allowed in the rural area; and a cap of 20 accessory dwellings, 8 of which can be in the rural area. He discussed some additional recommendations impacting the approval of accessory dwelling units.

Councilor King summarized the recommended changes; the overall town-wide growth cap is being maintained with an emphasis on development in the growth areas. They are reducing the dimensional requirements in growth areas to increase infill development, reduce nonconformities, and increase opportunities for growth. The three districts are designed to create a transition from the densest development in the east to the rural areas in the west. There are no proposed changes to the Farm and Forest district.

Councilor McBrady asked about changes to the Resource Conservation Overlay District and how that impacts these.

Councilor King said that was implemented in 2005 in an effort to increase open space in a housing development. Councilor Farber said that reviewing this district was part of LPAC's workplan. The lowest lot size available in an RCZO development is not as small as a lot allowed under the proposed RA minimums. This adjustment would make the RCZO consistent with the proposed changes.

Community Development Director Amanda Stearns said the RCZO would remain intact; it allows for reduced lot sizes, though the density remains the same as the underlying zone. Currently that lot reduction only goes down to 20,000 sq. feet for lots on septic and 10,000 for lots on sewer. The recommended amendments would allow lots in RA to go to 10,000 for all lots; if they do not change the overlay to match that, then lots in the overlay would be required to be 20,000 even though lots in the district could be lower.

Councilor Anderson wondered how they know they are allowing growth in the growth areas without changing the character of existing neighborhoods.

Councilor Farber said just because they open the door doesn't mean the opportunity will be taken. There are many lots in RA that are greater than 20,000 sf that only have one house on them. The neighborhoods in RA have diverse sized lots; they are not homogenous. These numbers are based on a study of existing neighborhoods.

Councilor King pointed out that these are minimum dimensional standards; if the market wants bigger lots, people will build bigger lots. She wondered if his concern related to rate of growth, how fast things could change.

Councilor Anderson said that was a part of it, building multi-family units is another part. It's hard to both offer these opportunities and also ensure that 10 years from now these neighborhoods would be similar to what they are today.

Councilor King pointed out that compatible doesn't mean there won't be any change. She said the growth cap would ensure that the character wouldn't change fast, if it changed at all.

Councilor Anderson said this is a lot of change, and a lot for the public to digest. He wondered how they move forward and make sure the public is aware and informed of the magnitude of the proposed changes.

Councilor King said they decided that it was important for these amendments to go together; it would be difficult to approve them in separate phases.

Ms. Stearns gave a brief review of the proposed amendment language. Councilor Farber pointed out that an accessory dwelling unit goes along with the primary dwelling on the deed. A two-family unit does not have to; each unit could be sold separately. The Council discussed the next steps. Councilor Farber wondered about holding a separate, televised workshop meeting for the Council to dig into the specifics. A public hearing was scheduled for April 25.

Town Council, April 25, 2016

Item 9 Public Hearing on a series of zoning amendments to implement Year 1 Comprehensive Plan strategies as identified by the Town Council.

Councilor Hemphill discussed the goals of the amendments, which are based on the 2013 comp plan. The CDC differentiated between growth areas and rural areas, and he showed a map of Town with each area color coded. He summarized the proposed changes, which will move some areas in FF into a residential growth district; all land in the rural areas will be zoned FF or in a new Highland Lake district. Density of development in Town will increase from west to east. He displayed a map showing the proposed zoning changes.

Councilor Farber discussed how and why the dimensional standards are proposed to change. The goal of the comp plan is to direct growth away from the rural area and toward the growth area, where there is more infrastructure. She directed people to review the matrix provided with the Council agenda, which details the dimensional changes to each district. She said that any conforming lot in the Water View Overlay District does not need any additional approvals; making more lots conforming would limit the number of conditional use permits that would be needed. Housing types included in the growth areas would include: single-family detached, single-family with accessory dwelling unit, attached two-family units, and multi-family (up to 6 units per structure) with units attached. The Town currently has growth limits; the proposed amendments would modify those limits, adding a subset limit for the rural area. Currently the total limit is 140 housing units; under the amendments the limit would become 109, with only 34 allowed in the rural areas. These are based on historical growth rates, and are designed to keep growth level.

Vice-Chair Anderson opened the public comment period.

John Winslow of Gray Road asked if they have done an inventory of current buildable lots, and compared it to the number of buildable lots that would be available with these amendments and requiring class B boundary surveys. With the smaller, tighter setback lines, it would be important to require surveys.

Brian Downey of Surrey Lane spoke in opposition to the amendments. He moved here from a very densely populated area in Virginia; they chose their home in Falmouth because they didn't want to live in a house that would be in a development. He thinks the new owner of the property behind him plans to develop that property. He felt the dimensional standards go way too far. This proposal requires more input from residents; it will impact people's property values. He heard a lot about a 5 cent charge on bags, but hasn't heard much about this.

Peggy McGehee, a member of the Senior Advisory Committee, said part of their goal this year was to review the ordinances to see if there were barriers to seniors' ability to age in place. They support the proposed amendments, particularly the changes to accessory dwelling units.

The current ordinances' requirements for the creation of an accessory dwelling unit are very expensive. The proposed amendments lower the barrier for the creation of those units. Christopher Hickey, a member of the Planning Board, asked if they are reviewing sewered vs. unsewered areas in the residential areas and requiring developers to install infrastructure at the time of development. He pointed out that there is no owner-occupancy provision on accessory dwelling units. A multi-family development requires approval by the Planning Board, which opens up due process for neighbors on the higher density use. He pointed out that small open space areas would have high impact on high density areas and he encouraged them to preserve that ability.

Andrew Berube of Ledge Rock Circle said making things clearer helps developers, and he supported the proposal.

Public comment period closed.

Councilor Farber said the CDC, in this Council year alone, has held several public hearings on these proposals; two town-wide postcard mailings were sent inviting the public to meetings and directed invitations were sent for another. She valued public input and wondered how they could have more success catching people's attention. The CDC identified a few more non-substantive tweaks they would like to discuss with staff and requested the May Planning Board MRA hearing be delayed to allow them to review those. The next available Planning Board meeting would be the first week in June, and then Council action could be scheduled later in June.

Vice-Chair Anderson asked why the growth cap is being lowered from the current 140 units to 109.

Councilor Farber explained that the current cap allows 65 units for multiplexes and it has never been met; they have in fact never gotten past 1 because the existing ordinance makes it very difficult to build those. The CDC felt that if they were making multi-family easier to build, they wanted to be cautious and pace it more.

Vice-Chair Anderson asked about the proposed expansion of Foreside Estates that was going to be discussed later in the meeting.

Councilor Farber said that a development that was under a master plan could be exempted from the growth cap if the Council chose. Neither Tidewater nor Oceanview were subject to the growth cap, for example.

Vice-Chair Anderson didn't think there was adequate public awareness of what these changes might entail. He wondered about segmenting this.

Councilor Farber asked if segmenting it would be more practical for the Council and allow them to feel they have a good understanding of it. She agreed that it is a lot.

Vice-Chair Anderson asked if the CDC ever discussed applying this to land that is currently undeveloped, and not land that is already developed. He asked if that would alleviate concerns about changing the character of existing neighborhoods.

Councilor Hemphill said that would seem to focus more on land in the rural areas, which is not consistent with the goals.

Councilor Farber suggested scheduling a Council workshop to discuss this item, recognizing that there are two Councilors that are not present tonight. The Council agreed with this suggestion.

Town Council, May 9, 2016

Item 1 Workshop to discuss suite of zoning amendments based on the Year 1 implementation of the Comprehensive Plan.

Councilor King gave a brief history of the work to date.

In response to Councilor Anderson, Councilor Farber discussed the changes to the cap: there are no changes to single family dwellings, but the growth cap on multi-family dwellings is being reduced. This is because the amendments make it easier to develop those multi-family units, and they wanted to pace that development. The Town has had one multi-family dwelling built under the current ordinance. Councilor Anderson asked how the proposed expansion of Princeton Properties would be affected by this change. Councilor Farber said the current proposal from Princeton Properties doesn't meet either the current zoning or the new zoning. All commercial areas and the housing developments would be exempt from the growth cap. Councilor Anderson asked if this would discourage or slow down new affordable housing developments. Councilor Hemphill pointed out that there has been no activity in this category before now; there may be a huge increase in this type of development due to these amendments. Councilor Farber said many of the larger developments they have seen have had their own separate zoning by way of individual districts, overlays, or master plans, which excluded them from the growth cap. The Council could exempt any future significant project from the growth cap.

Councilor Anderson acknowledged that they hadn't seen this type of development in the past but was concerned that they may see more of this type of development in the future. He wondered why they made the change.

Councilor King said it had to do with pace of development and developing a comfort level with it. The proposed annual cap is 6 buildings. Councilor Farber pointed out that the minimum lot size for these developments is 2 acres; a lot of that size is rare in the more densely developed areas of town.

Councilor Anderson wondered what would happen if a developer wanted to build an 8 unit apartment building. Councilor Farber said it isn't permitted under current zoning, and wouldn't be under the proposed amendments. It would require an amendment.

Councilor Farber pointed out that this isn't about the creation of lots; the caps are about building permits issued in a given calendar year.

Councilor King discussed a request for pocket parks and playgrounds in the more densely developed areas; she said that isn't addressed by this zoning. That it could be addressed by the Resource Conservation Zoning Overlay at a future date.

Councilor King spoke about accessory dwelling units; she agreed that a requirement for the landowner to live in one of the units on the lot is appealing, but it is very difficult to enforce.

Councilor McBrady asked about the change of the property on Falmouth Road to Farm & Forest.

Amanda Stearns, Community Development Director, explained that the map developed by the Comp Plan identified this area as one that might be rezoned. It is characterized by large parcels, many of which are already protected, and it would be cost-prohibitive to bring sewer to it. It was originally zoned RB and was moved to the rural area as part of the map work done by the CDC last year. While the school property that abuts it is technically included in the growth area due to State requirements, it is still very much rural. Councilor King said the goal was for the

residential growth areas to support the commercial growth areas, and that as you move further away from the Route 1 and Route 100 corridors, the density of development should become lighter.

The Council discussed next steps. The amendments will be sent to the Planning Board for a MRA hearing on June 7 and the Council order would be scheduled for their meeting on July 11.

Planning Board, June 7, 2016

Item 5 A series of zoning amendments to implement Year 1 Comprehensive Plan strategies as identified by the Town Council.

Mr. Chace asked the Public if anyone was interested in a presentation of this item. No answer from the Public. Claudia King, Town Councilor and a Community Development Committee member, offered a brief presentation. Mr. Chace then opened the floor up for public comment.

PUBLIC COMMENTS: Tim O'Donovan, 6 Barre Way, supports the zoning amendments.

PUBLIC COMMENTS CLOSED.

Mr. McKeon stated that this item has had many public meetings. He is fine with these zoning amendments. Mr. Hickey asked whether the amendments had a graduated density allowance based on relationship to public utilities like sewer. Karen Farber, Town Councilor and CDC member, stated that the CDC contemplated such an arrangement but then decided against it due largely to the added complexity of the ordinance.

Amanda Stearns, Community Development Director, stated that the current ordinance does not have a density bonus based on sewer or water connections. There are lots of other factors that determine lot size, though, such as suitability of soils for septic.

Mr. Hickey was sympathetic to concerns about making the ordinance more complicated, but also felt it was a good planning tool to take public sewer into account. He feels the Town should provide the incentive for developers to connect to sewer.

Mr. Cole had no issues with the proposal. Mr. Kaplan stated he felt he would like to see thoughts of energy usage included in this plan. Mr. Chace felt that trying to incentivize growth should include another look at sewer connection. He was confused about Section 19-42 – Multi-Family dwelling, which includes a new provision stating that the site must be accessed by two means of access. He wondered about the rationale for this, especially in instances where developers are tasked with trying to reduce curb cuts.

Ms. Farber stated that the town has a connectivity policy when looking at public streets. They were trying to think of this in terms of multi-family residential development and how to eliminate dead-end areas. She felt there was value in connectivity including for bicycles and pedestrians.

Mr. McKeon moved to approve the zoning amendments with the recommendation of changes.

Mr. Cole seconded. Mrs. Stearns requested that the Planning Board name the specific items they would like changed. Mr. McKeon asked to withdraw his motion, and Mr. Cole agreed.

Mr. McKeon moved to approve the amendments as written with the recommendation that in Section 19-42 instead of requiring 2 means of egress, requiring a standard. Mr. Cole seconded.

Mr. Hickey stated he would like to see density standards on water sewer connection. Mr. Chace stated he was satisfied with the amendments as they were written. Mr. Cole agreed with Mr. Chace that it makes sense, but can it be handled through another vehicle other than a zoning

change to this package of amendments. Mr. Hickey made an amended motion to recommend that the CDC, working with the Town Council, revisit the matter of creating additional density standards depending on whether a lot is hooked up to public sewer and/or public water. The motion failed for lack of a second.

The Board approved the original motion 5-0.

Town Council, July 11, 2016

Item 2 Ordinance to amend the Code of Ordinances and the Town of Falmouth Zoning Map to implement Year 1 Comprehensive Plan strategies as identified by the Town Council.

Councilor King summarized the work done to develop these amendments. Community Development Director Amanda Stearns has made some modifications to bring the language in line with the intent of the changes.

Councilor King moved the ordinance; Councilor Hemphill seconded.

Councilor Hemphill said this is the result of a lot of well thought out recommendations. It follows the comp plan and opens new opportunities for the town. A lot of work has gone into it. He thanked staff for their hard work. Chair Farber thanked the members of the public for their attention and input during this process.

Councilor Ferrante was concerned that it was extensive change. She worried about unintended consequences and negative impact. She wanted the Council to stay aware of and responsive to any impacts that come up. Councilor Svedlow agreed.

Chair Farber felt the Council has been very responsive to problems; they have modified many ordinances in the past, not just to address problems but also if something isn't working well. She thought they might consider implementing something in the noise ordinance that would prevent construction in established neighborhoods early in the morning.

Councilor McBrady thanked CDC and citizens for the hard work. He struggled with these changes, but after careful review he came to the realization that this is good for the town.

Councilor King said this was a very good attempt, and if there are problems they can fix them. She said this best follows the guidance of the comp plan.

Councilor Ferrante agreed that change was sorely needed. She hoped that residents know that, if they have problems, they can come to the Council for help.

Motion carried 7-0.

Town Council, September 11

Item 6 Request from Councilor King to work with staff on a moratorium introduction to prohibit the development of two-family and multi-family development in the Growth Area residential districts.

Councilor King said there is an inconsistency in the ordinance that make the development of diverse types of housing in the residential districts inequitable. There is a strong preference in some cases for two-family dwellings, in exclusion of other types of development. The proportion and number of two-family dwellings being proposed was not anticipated and was not intended by the ordinance amendments. In order to maximize his profits under the current zoning, a developer is forced to develop two-family dwellings instead of being able to design a more diverse housing development. The Town has heard from residents that have been impacted by this situation. She said with this moratorium further multi-family development would be prohibited until such time as the ordinance language is amended to produce more what the Town wants to see in housing development. This moratorium would not apply to any development that has already received substantive review, and it is intended to be temporary. Councilor Ferrante asked for some background on current developments that would be impacted. Ms. Stearns discussed the recent applications that have been submitted to the town for multi-family development in the time since the amendments were passed, and the status of each.

Chair Hemphill asked how that relates to historical development; Ms. Stearns said there has been no two-family or multi-family development in the last 12 years, due to the ordinance language at the time. She agreed with Councilor Farber's point that LPAC was working on their recommendations at the tail end of the Council's work on the omnibus amendment. Since those efforts were not dovetailed, they ended up with a significant density bonus for two-family dwelling development.

Councilor Farber pointed out that relatively all density has increased, but the density for two-family has leapfrogged over single-family. Ms. Stearns said that is correct.

Councilor Farber said she would want to see a date certain placed on a moratorium if it were passed. Any moratorium can be lifted with a vote of the Council if the work was done earlier.

Chair Hemphill asked if 180 days was a reasonable time frame. Ms. Stearns pointed out that the ordinance amendment approval process itself take three months.

Councilor Svedlow said the ordinance language that was passed gives a message to developers about what the Town wants, and now they are looking to change that message. He is concerned about the message that sends the business community. He was concerned about passing a moratorium on a type of development that is environmental friendly and more affordable.

Councilor King said the Council is responsible for making a good town. They have an ordinance that is inconsistent with their policies and that strongly supports one type of development. It prevents developers from creating developments with diverse housing types.

Chair Hemphill said the moratorium was dramatic, but addressing the issue will take some time. This has become an important issue for the public. This situation was an unintended consequence of the ordinance amendments and he was willing to address establishing a

temporary moratorium to give them the time to study the issue and come up with a consensus solution.

Councilor Jones didn't like the idea of the moratorium. If they could get the policy questions answered quickly on the changes to RCZO, that would take care of the issue without the need for the moratorium.

Ms. Stearns said once the policy decisions are made, she didn't think the language would take a long time to write; she thought they could determine the policy question within a few months, given enough time to meet on it.

Chair Hemphill said they are seeing a lot of backlash on this type of development. Without a moratorium, they will see more applications being filed. He supported the idea of a moratorium.

Councilor Farber was concerned that the moratorium would distract them from taking a short amount of time to get the problem solved, but it may be a more complicated discussion than they think and it might take longer. Throughout all their work on these amendments, she thought that single-family and two-family homes would be treated the same.

Councilor Jones pointed out that if the process was dragging on, and they were seeing an uptick in applications, they could consider a moratorium in the future.

Chair Hemphill summarized the discussion of the Council that they did not support Councilor King working with staff on moratorium language.

Town Council, September 25

Item 8 Report from Councilors Chair Hemphill and Councilor Svedlow on discussion with staff on zoning policy options related to the Resource Conservation Overlay Zoning District and other matters related to density in residential districts.

Chair Hemphill reported that he and Councilor Svedlow met with Mr. Poore and Ms. Stearns last week.

Amanda Stearns, Land Use Policy Specialist, said the group made the following recommendations based on their discussions:

1. Changing the amount of open space in the Resource Conservation Zoning Overlay District (RCZOD) for rural area districts (FF and HL) to 50% could be brought forward immediately as a separate amendment. Any changes to open space in the growth area will wait until the completion of the Greening of Falmouth 2.0;
2. The integration of two-family and multi-family development into the RCZOD can be drafted without addressing the density disparity in the ordinance.
3. The study group would like direction on whether they are charged with addressing the density issue and if so, seek guidance on the issue.

The Council discussed how best to proceed with this issue.

Councilor Svedlow said he didn't like the current zoning; he agreed that the door is too widely open and should be closed some, but he opposed making what they do retroactive. He didn't think it was appropriate for the Council to change the rules mid-stream.

Councilor Farber said when the Council enacted the omnibus zoning amendments, they made 2- and multi-family homes feasible and practical in Falmouth but they did not extend the RCZOD for those types of homes, thereby incentivizing them over single family homes. This was inadvertent. Making these types of housing available was consistent with the comp plan, and

she would not want to go back on that. The intent is still good. Extending the RCZOD to those housing types was recommended to LPAC. Falmouth is primarily single family homes, and people clearly value that character in town. She supported moving this issue to CDC to craft ordinance language to address the bias toward 2- and multi-family housing. She felt it was important that they not reduce the minimum square footage requirements for single-family homes; she wanted them to adjust the minimum square footage requirement per unit on 2- and multi-family homes. She agreed with Councilor Svedlow; making this retroactive to those developments that are already being reviewed is not the way for the Council to conduct business. She suggested an ordinance retroactive to October 1 or even today (September 25). She suggested staff develop a way to contact people who have expressed an interest in developing a project.

Councilor King agreed with Councilor Farber on her summation of the changes that were made and their consistency with the comp plan. There was an oversight; the Council made a mistake. This ordinance is not what they intended. She supported the recommendations on changing the open space and extending the RCZOD to multi-family housing. She thought figuring out the density would be tricky; she had several ideas on ways to address it and was open to other ideas. She said a group of two councilors could move more quickly than a full three-member sub-committee. She thought they should look at a moratorium; they don't know how long a fix might take. It could be a matter of months instead of weeks. She said a moratorium would be limited and it would be appropriate. She would be willing to look at retroactivity; what it would entail and what the impacts would be. She said she is here to represent the citizens of the town, and what the Council did had an impact.

Councilor Jones supported the study group looking at the density issue; a development as dense as Tuscan Way should not be in that area of town, where there is no sewer. It is a question of where density is located. They want density, but they want the density where they want it, and not where it might be harmful.

Chair Hemphill was willing to continue as a group; he pointed out that CDC is quite busy. A group of two councilors can move more quickly. He suggested talking about this issue at a Council workshop.

Councilor Farber asked if the Council would be interested in a special workshop meeting prior to October 1. The Council discussed scheduling an additional meeting.

Mr. Poore said an ordinance with included retroactivity can achieve the effect of a moratorium without passing an actual moratorium. He asked the Council to provide staff and the Town Attorney some guidance on their interest in and support for retroactivity soon.

Councilor Farber supported retroactivity as far back as the last Council meeting (September 11), or even tonight, but not further than that.

Chair Hemphill agreed that the Council did not anticipate this result when they passed the original amendments. He understood residents' concerns about these types of development, which are new for the Town. He felt the Council needed to look at this issue and consider the current developments under review. He thought they should look at ordinance language and perhaps looking at some retroactive adjustments. He understood that the developers have made investments, but this issue is a surprise. They owe it to the community to consider it.

Councilor Svedlow agreed that it is an awkward situation, but he felt it sets an awful precedent to go retroactive.

Councilor Jones supported retroactivity.

Councilor Kitchel was willing to support retroactivity, but he wanted to understand the nuances of the ordinance amendment and its effects. He supported holding a workshop. He wanted this to be fair and equitable to all parties.

Mr. Poore summarized that there is a majority of the Council that support retroactivity. The laws are specific on how far back they can reach. One of the developments could be before the Planning Board for final approval in October; the other could receive its final approval in November. He said for the ordinance to be retroactive and impact a development, it would have to be passed within 45 days of the plan's final approval. He suggested a special meeting this Wednesday to workshop this item.

The Council tentatively scheduled a workshop meeting for Wednesday, September 27, at 5:30 pm.

Town Council, September 27

Item 1 Discussion about the impact of a 2016 zoning amendment that increased residential density in certain zoning districts and to consider the introduction of an ordinance amendment that could address concerns previously identified by the Town Council.

Chair Hemphill moved to enter executive session pursuant to the Laws of Maine to discuss legal rights and duties with the Town's attorney, pursuant to 1 M.R.S.A. § 405 (6) (E); Councilor King seconded. Motion carried 6-0.

The Council entered executive session at 5:35 pm and returned at 5:59 pm.

Amanda Stearns, Land Use Policy Specialist, said there are two options for action for the Council to discuss this evening: adoption of a moratorium to give the Council up to 180 days to study the issue and block any permits from being issued during that time; or the adoption of a zoning amendment which would have a similar effect as a moratorium but would provide the public with more information. She provided the Council with some language staff have drafted. In July 2016, the Council passed language that changed how two- and multi-family dwellings were treated. The proposed language would turn back the clock, so that the ordinance would treat these types of developments the same way they were treated before that amendment was passed. This would give the Council time to determine how they want to treat those developments moving forward. Both the moratorium and the proposed ordinance would have the same effect.

Amy Tchao, Town Attorney, said it would be helpful for the Council to address two issues if they want to entertain any action, namely: what are the pros and cons of passing a moratorium versus an ordinance, and whether the Council wants to consider retroactivity on either of those two actions.

Ms. Stearns said the act of adopting this suggested reversion amendment is a final action, but does not preempt the Council from studying the issue and passing additional amendments in the future. She discussed the specific changes that were made in July 2016. They changed the definitions of multiplex to multi-family, and she recommended maintaining the changes to the definitions. She said the reversion would cause each residential district to revert to its previous requirements for lot area, lot width, and density allowances for two- and multi-family dwellings.

Councilor King asked if the reversion ordinance is simpler or more straight-forward. Ms. Stearns said it relates to retroactivity.

Atty. Tchoa said it is permissible for towns to pass ordinances that are applied retroactively so that they would capture any applications that are pending at that time. That can be done in the case of either a moratorium or an ordinance. They can make an ordinance amendment that reverts and then do further study, make an ordinance amendment that reverts and do nothing, or do a moratorium which would give them a definite time period in which staff and Councilors are working on an ordinance amendment. There is permanence to an immediate ordinance adoption, but it still allows them to work on it.

Ms. Stearns said there is a timing issue; there are pending proceedings right now and if the Council chose to include those so that they had to meet either the amendment or the moratorium, whichever one the Council decided to do, it would have to be introduced on Monday, October 2, 2017 at the latest.

Councilor Kitchel said the issue is they have an unintended consequence of a zoning amendment; he remembers that one of the goals of the changes was to allow people to add an in-law apartment. They reduced the setbacks for those, and that was a benefit for people. What he saw happening was projects where duplexes were popping up and adding more density than he expected and were not consistent with the neighborhood. He wondered if they can mend this ordinance in parts, maintaining the ability for in-law/additional buildings on a property but excluding intense projects that have a lot of buildings on a small space.

Ms. Stearns said the draft amendment would not impact the ability to create accessory apartments or cottages. Those would remain in the ordinance as they were passed in 2016. Those uses are separate and distinct from a two-family dwelling.

Councilor Farber asked in which zoning districts the pending applications are located; Ms. Stearns said RB and RD.

Councilor Farber asked if the reversion could be drafted to allow an individual two-family or multi-family development on a single lot versus a subdivision development. Ms. Stearns thought they could draft something that could draw a line between single lot development that didn't need Planning Board approval versus development that would need Planning Board approval.

Councilor King asked what the dividing line would be; Ms. Stearns said there is bright line between projects that require Planning Board and those that do not. Defining it by subdivision law can be murky due to the number of exemptions allowed under state statute.

Councilor Ferrante said there are individual lots that might need Planning Board approval; Ms. Stearns said that was correct, if they were part of a subdivision for example.

Councilor King felt it was the Council's intention to look at the density of this type of development. She understood timing is tight if retroactivity is a consideration and the ordinance reversion is the most straight-forward way but she felt the moratorium better conveys to the community what they are trying to do: stop what was an unintended consequence and go forward to study it.

Councilor Jones felt that if they can make this fix and revert to rules that were in effect 14 months ago it would make it easier for developers to understand what the rules are. This is very difficult for the developers that were told by the rule change 14 months ago that they could move forward with this type of project.

Councilor Farber was leaning toward the moratorium; it gives them a fixed time frame which would prevent it from being pushed off by other work, and it sends a signal that they are not throwing out the idea of having diverse types of housing. It says they still value that type of housing but they want to see how they can make it work the way they want. The rules that were in place before do not allow two-family and multi-family housing in effect.

Chair Hemphill felt reverting would be a neater solution; he felt they were motivated to create more diverse housing options, but the current situation leads them to the need to review it. He agreed that the concept of the moratorium gives the message that they are actively working on it, but either option will give that message.

Councilor Kitchel proposed a moratorium to buy them the time to address the problem and get public comment. He was anxious to get the process started.

Councilor Ferrante liked the option of reversion with the intent to study; if someone wanted to move forward they can under the old rules; she felt a moratorium would prevent anyone from doing anything. She asked about the impact of retroactivity on those applications in process.

Councilor Farber asked Ms. Stearns to explain why the previous ordinance language was problematic for these housing types. Ms. Stearns explained that the formula that calculates the maximum number of units is different from how individual lots are laid out. For an individual lot, you have to have a minimum lot size, and then within that lot you must have a certain amount of net residential area per unit. Under the current ordinance, in cases where there are multiple units on one lot, in order to calculate the maximum number of units one must calculate the net residential area for the entire parcel and then divide it by a density allowance amount. That amount is not the same for two- and multi-family as it is for single-family; the allowable density for two-family and multi-family is twice what is allowed for single-family units. This disparity was always there, but there were never any two or multi-family units before so staff was unaware.

Councilor Farber asked if they could pass the reversion with a sunset clause; Ms. Stearns said they could. If the sunset passed with no action, it would free the existing ordinance.

Chair Hemphill asked about retroactivity; Atty. Tchoa said they could enact an ordinance amendment which would take effect the date the ordinance was enacted. They could insert a retroactivity clause which would reach back and say that the standards of that amendment apply to any proceedings that existed as of a certain date. There are limits on how far back they can reach; they can reach back to capture proceedings for which there hasn't been final approval granted, and also those proceedings for which final approval has been granted as long as the ordinance is enacted within 45 days of the final approval. This would nullify that final approval. Retroactivity is legally permissible; she doesn't see it occur often.

Ms. Stearns pointed out that the Council used retroactivity in their moratorium on retail marijuana. They used the date of introduction in order to prevent any applications from being submitted during the approval process.

Councilor Farber asked if they held an introduction on October 1, for example, and it was retroactive to the date of introduction, anything that has received final approval would move forward. Atty. Tchoa said with a retroactive date of Oct 1, they are looking at any pending proceedings that existed up to that date and that the pending ordinance language would apply to those proceedings. Pending proceedings are those that have received a substantive review by the Board. Typically, the rules are that if a project has received substantive review, they

continue under the rules that were in effect at the time of that review. They can legislate their way around that rule. Secondly, anything that received its final approval in the 45 days preceding the enactment date would be nullified. They can limit or change the date of retroactivity.

Councilor Farber said without retroactivity it would take effect on the date the ordinance was adopted; Atty. Tchao said that was correct.

Councilor King said the original amendments were passed in order to meet the goals of the comp plan, but they had unintended consequences. She felt they want to move forward to get these amendments right in keeping with those goals. She advocated moving forward with retroactivity in such a way that they capture those projects that are being developed with these unintended consequences. She felt bad for the developers, but she felt her responsibility was to represent her constituents. She said the neighbors would be impacted for 30-50 years if those homes are built. Councilor Kitchel agreed.

Councilor Farber did not support retroactivity; she understood the concerns of the neighbors but she didn't think this was about health and safety. They can't do things like these lightly. When they made changes in VC-1 and -2 they allowed first floor retail with housing above. They haven't seen any of that developed yet, but she wondered what would happen if something came through and people didn't like it. She wondered what message they would be sending to future developers. She wondered how the community would trust that anything would stay put. It isn't perfect, but it isn't a disaster. They risk doing long-term harm of another kind if they go retroactive.

Councilor King thought the difference in this case is that they changed the incentives to favor one specific form of housing, which was not their intention and they don't want to go forward with that. That is different than if people just don't like something that someone built. The current incentives are not where the comp plan or the economic development plan wanted them to be.

Councilor Ferrante asked if two-family or multi-family are allowed in VC districts. Ms. Stearns said the VC districts allow any number of dwelling units as long as they are on the second floor or higher.

The Council discussed how to proceed; staff recommended that the Council decide whether they want a moratorium or an ordinance tonight. Staff could then draft two options, one with a retroactivity clause and one without, for a special meeting on October 2.

Councilor Kitchel asked about the effect of the moratorium. Ms. Stearns said the effect would be that any two- or multi-family development would be put on hold. They haven't finalized how it would apply.

Atty. Tchao said the difference between the two is that the moratorium has the proscribed amount of time of 180 days. If they don't have anything in that timeframe, the current ordinance would come back into effect. An amendment would give a certain answer, but depending on direction from the Council it could be changed. It would not be bound to a set timeframe.

Councilor Ferrante favored the reversion with the intent to study. It allows people to do something; a moratorium wouldn't allow people to do anything. She was torn on the subject of retroactivity – it was wrong with its effect on developers, but it was right to correct their mistake.

Atty. Tchao left the meeting.

Councilor Farber suggested a sunset on the reversion; she felt the appeal of the moratorium was that the deadline forces action. She agreed that the moratorium prevents action; while the old language doesn't allow these developments, it allows people to do something. Ms. Stearns said if they pass the revision ordinance with retroactivity with a sunset and they failed to act, the ordinance would revert to its current wording. They haven't left any doubt as to what the ordinance says at any time. The moratorium doesn't have that effect.

Councilor Farber thought a sunset could be added at a later date; Ms. Stearns said they would be better to introduce it with the sunset and then remove it. Councilor Farber withdrew her suggestion, in recognition of the limited time available.

Councilor King pointed that no one developed under the old language because it was so restrictive; it is not useful. Ms. Stearns agreed; there was one project developed in the 12 years they looked back. Councilor King said the Council should consider that if they were looking at revision.

Ms. Stearns said the Council could couple the reversion with a resolution in which they commit to the public that they will address the issue in a timely manner. Councilor Farber thought that was reasonable.

Councilor Jones liked the idea and intention of the sunset, but he felt that they had goals when they passed the amendment in 2016 and the application that came in after were not what they were looking for. He didn't think they need the deadline; they want to get this right. He wanted to revert with retroactivity.

Councilor King still supported the moratorium but also like the idea of the reversion with the resolution.

Chair Hemphill asked about the consequences of retroactivity of the revision; Ms. Stearns said there is no difference between the reversion and the moratorium. There are two aspects to the retroactivity: moving it to the introduction date and capturing pending proceedings as of that date; and the second is the final approvals that have occurred within the 45 days prior to the adoption date. If they don't want to capture those pending proceedings, they would just not have retroactivity. They can choose to capture the pending proceedings and not to nullify those proceedings that receive final approval within those 45 days.

Councilor Ferrante felt the Council all agrees that they need to study it. She supported either reversion or moratorium. The retroactivity is the bigger issue.

The Council agreed that the two options are functionally the same and the consensus was to move forward with the moratorium.

Ms. Stearns suggested introducing the moratorium with maximum retroactivity; since that is most restrictive option. They could relax or remove it at a later date after taking public comment and holding more discussion.

At Councilor King's request, Councilor Farber explained that she felt retroactivity set a bad precedent and sends the wrong signal. She asked how people will continue to trust that things will stay steady and they can do things with their land. She said it felt a little unprincipled; it doesn't feel right to pull the rug out from something that is in process.

The Council set a special meeting for Monday October 2, 2017 at 5:30 pm. Chair Hemphill announced that they would hold a public forum at that meeting after the Council had some

discussion about their options, and then they would have an introduction of a moratorium that is retroactive to the date of introduction.

Town Council, October 2, 2017

Item 1 Discussion about the impact of a 2016 zoning amendment that increased residential density in certain zoning districts and methods to address concerns previously identified by the Town Council.

Amanda Stearns, Land Use Policy Specialist, gave a brief history of the ordinance language since it was passed in July 2016, the unintended impact it has had, and explained that the Council determined at their last meeting that staff should proceed on drafting a moratorium with retroactivity to address these impacts. The purpose of using a moratorium instead of a reversion of the ordinance was to take a very exact approach to the problem and focus on where the issues are. She said that permits for infill development, 2-family dwellings on one lot, were not occurring at the same rate as those developments requiring subdivision approval, so those developments will continue to be allowed under this moratorium.

Councilor Farber asked what kind of development would be impacted by the moratorium. Ms. Stearns said this would only impact projects that require Planning Board approval. She discussed what qualified as a subdivision and listed several of the exemptions in state law. The types of developments that only need a building permit would include the conversion of a single-family home to a two-family home, development of a single, vacant lot or a lot split. A multi-family is defined as three families or more; without exemptions, these types of development would require Planning Board approval and so would likely be covered by the moratorium.

Councilor Farber clarified that this does not impact single family units, or accessory dwelling units, at all. She asked how this might impact any contract zone application that is in process. Amy Tchao, Town Attorney, said this would not impact any contract zone applications before the Council; the contract zone is a legislative process and is outside the zoning that is in place. She said the proposed language addresses the Council's request to take a narrower approach as opposed to a full reversion of the ordinance passed in 2016. In the growth districts, they changed their density requirement so that a single-family needs 10,000 sf instead of 20,000, and a two-family property needs 5,000 sf per unit. In RA, you could have either a single-family or a two-family dwelling on the same lot. For subdivision proposals, an applicant must calculate the maximum number of units allowed. The formula for this takes the max net residential area, and divides it by the allowed sq. footage of the type of unit proposed. For a single-family home, that would be 10,000 sf, but it would be 5,000 sf for a multi-family home. This inadvertently made it easier to propose a development that contains twice the number of two-family units as the single-family units that would be allowed.

Councilor King said if the Council develops different density it will affect all lots, not just subdivision lots. Atty. Tchao said the moratorium puts a hold on things until they discuss how they want to address this. They could address the density on all lots, or they could decide to discuss just subdivisions. The moratorium was designed to address subdivision lots only while the Council discusses further action. Councilor King said the reason it is limited to just subdivision is because that is where the issue has been so far. Atty. Tchao said staff studied

how many infill developments had been proposed; there were only one or two. Based on that research, it seemed that the subdivision development was the most acute issue.

Item 2 Public Forum

Chair Hemphill opened the public forum.

Fred Chase of Stagecoach Road clarified that this proposed moratorium will not impact the contract zone that is being proposed for Mountain Road/Route 100. When the RD and RB districts were created in 2016, they should have been applied to where public water and sewer is available, or where it will be installed someday. The reason for having 40,000-80,000 sf lots is to provide room for wells and septic. The only way to be fair to everyone is to have a moratorium that is retroactive; if it is not retroactive it isn't fair to anyone. Letting a couple developments through and blocking others isn't fair. If the ordinance is wrong, they need to get it right before some developers spend significant money.

John Winslow of Gray Road thought they weren't going back far enough; he wanted the Council to review the entire ordinance amendment that was passed in 2016. He didn't feel the Planning Department had adequate information on the environmental, traffic, and public service impacts of these residential high-growth area amendments. They are not mandated by the state to have these amendments, just to have a comp plan. He felt the Council is changing all the rules for the people who built in the area and want to call this place home. He felt it has been a mistake from the start.

Leslie Riversmith of Middle Road abuts one of the proposed subdivisions. She owns the first deeded house in Falmouth and lives next to a home that was built in 1809. While Falmouth doesn't have a historical district, if they did she felt it would be around her home. She felt this was indicative of the feel that Falmouth wants to have. It is a residential area, and they bought into its historical, pretty value. She didn't buy into having three duplexes on the lot next door. The sf of the houses has gone up; the new buildings will be 8000 sf. They have had water problems on their property since Emerald Pond was built. It has flooded twice in the last 7 years. She was concerned that the water from this development will come onto her property. She was concerned that this development will negatively impact her property values.

Don L'Heureux of Brook Road wondered if single-family dwellings would be impacted. There is a development of condos at the corner of Blackstrap and Middle. He was concerned about the impact of property values and quality of life. He is a realtor that sells a lot of property in Falmouth. He felt that West Falmouth is now the Wild West Falmouth. There was a home built on the corner of Blackstrap and Brook where they diverted a brook to build. He thought it was out of control, and he appreciated the Council taking control of it. He supported the moratorium and he hopes they control condo growth to protect waterways and minimize traffic impacts. He would like to see a compromise. He would like to see 16 units at Tuscan Way instead of 32. It is unreasonable to drop 32 units on that lot. He spoke about the mound septic systems at Falmouth Country Club and the cost of system failures. He would like to see the Council give the Zoning Board the authority to require developers to bring public sewer to these developments.

Tim Flaherty of Woodlands Drive opposed the moratorium. He felt it was directed against Tuscan Way. He said Jim Cummings is the most honest and qualified contractor, and will do an incredible job. He has installed many difficult septic systems. He represented the Pride family in

the sale to Cummings. He felt this would be the best project the town has seen in a while. He said this was an age-restricted, 50+ project, and is developed to appeal to this market. It is a quiet neighborhood. He said they just built 72 of these at Prides Corner; it is quiet and has minimal traffic. He wondered what the allowed density would be if they brought sewer to the site; he thought it might be 80 units. The soil scientists would say that septic is better than sewer. He said there would be no impact on the schools in this development; that is what happened in his previous projects like this one. This type of unit is very much in demand, and he felt the moratorium was an overreaction. Michael Traister, attorney representing Jim Cummings, spoke on Mr. Cummings' behalf. He said this project is a pending proceeding before the Planning Board, and has received preliminary approval. Mr. Cummings is scheduled to go back before them for final approval in a couple weeks. Under the ordinary rules, his project would not be impacted by any ordinance changes. Their issue is the proposed retroactivity. Mr. Cummings has about \$500,000 invested in this project and he submitted it in conformance with the Town's ordinances at the time. He has acted in good faith. It isn't fair to pull the rug out from under him. It seemed that the two projects that would be impacted are being singled out. He said this sets a bad precedent; changing the rules after the fact is not fair and would impact the business community. They think this is a good project and complies with the zoning. If the Council feels that changes need to be made they can do that moving forward. The neighbors have other methods to oppose the project.

Adrienne Fine of Terradyn Consultants, the project engineer on Tuscan Way, spoke about the development and how it was designed in accordance with the ordinances. It was presented to the Planning Board in December 2016, and has been through a rigorous process since then. The through-street connection from Brookfield to Blackstrap was designed in accordance with the Town's policies. Their septic design was designed with four backups, which is above and beyond the state plumbing code but in accordance with Town requirements. Multiple traffic studies have been completed on the proposed street. The applicant has jumped through hoops to prove to the Planning Board that the design was adequate. The applicant has also agreed to build sidewalks and provide public easements along the trails and roads so the public can use these. The applicant has spent significant time and money, and has received the permits and approvals from all outside agencies. The Planning Board granted preliminary approval in September. If the moratorium is applied retroactively, the applicant will face significant financial burden. They are on track for final approval.

Steve Hundley of Brookfield Road appreciated the Council addressing this matter with urgency. He supported the moratorium being applied retroactively. He didn't agree that the moratorium would be unfair to the developers; he felt the Town has told the developers that the density was excessive and that it would negatively impact the neighbors. They were asked to scale-back their developments, and they have refused to do so. The developers were well aware of the risks involved in pushing the ordinance to its limits and he didn't feel bad for them. Making the moratorium retroactive sends a message to developers that they can't bully the Town into accepting a development they don't want and will negatively impact the neighbors. This is a cost of doing business. There is a health and safety issue here; both with the traffic and the cluster septic system. He was a professional soil scientist for 40 years and served as state soil scientist in Vermont, Massachusetts, and New Hampshire. In his whole career, he never saw a system designed that was so egregious as the one proposed for Tuscan Way. He encouraged

the Council to do a site walk on the property. This is a contaminated site waiting to happen. He said these types of developments are a big deal to the neighbors; the residents work to keep their homes and properties nice and it contributes to Falmouth's character as a nice community. He hoped the Council would take the side of the residents and not an out-of-town developer. The residents will have to live with the consequences.

Whitney Bradford of Brookfield Road said that she never heard that Tuscan Way was intended to be age-restricted; it didn't make sense for those to be three-bedroom units if that is the case. She asked the Council to make any changes retroactive; while she understood the financial implications on the two developers, she wondered about the financial implications on the residents. She built a home on a dead-end street for the quiet and lack of traffic. The neighbors don't oppose a development on the abutting property; they oppose 32 units on less than 3 acres. It doesn't fit the character of the neighborhood. She asked the Council to make the changes that will correct what was done, and to make them retroactive.

Jan Baker of Brook Road was concerned about the direction Falmouth was taking with regards to the zoning. The quality of life is what brings people to Falmouth, and dense zoning will change that. She acknowledged that it will be difficult for the developers in question, but she agreed that it should be retroactive to make it a level playing field. People don't oppose development, just the density proposed. She argued that the developer will not lose all the money he has invested, but it will make the development less dense.

Barb MacNell of Lakeside Drive said what is fair is not necessarily right. They are stewards of the land and she was concerned about what will happen in 10-15 years if they don't pay attention to the land and water, and how development of any kind affects us.

Dan Green of Kimberly Lane said this is the result of an unintended consequence of an ordinance that was trying to help people. The density of the proposed projects changes the character of the town. He didn't want what is going in there, and it is not why he purchased his home. He thought the moratorium would allow them to analyze what is going on. This is the first he has heard of any age-restriction on the development. If this type of housing was intended for first responders, as was mentioned previously, they need to look at how they pay first responders instead of allowing this density.

Allen Fitzgerald of Sunrise Drive said Hamlin Road is an old neighborhood and in the last few years it has transitioned into young families. He doesn't take his kids on Brook Road anymore due to the traffic. The entrance of Tuscan Way will be directly across from Hamlin; there is no way people are going to turn left onto Blackstrap. He isn't opposed to development, and he knows young people who would love to purchase units in the area. This is the first he has heard of age-restriction at Tuscan; these are three-bedroom units, and he wondered how that would be implemented and would carry over.

Jim Cummings, developer of Tuscan Way, said the project isn't on a 3-acre parcel; it is 19 acres. On Hamlin Road, there are .25 acre or .5 acre lots; his units will have more space. He said his development has 4 septic systems designed to handle all the septic from the units, as well as 4 complete redundant systems to back up the primary systems. Locating the units on 3 of the acres means that only one abutting property will see the units seasonally; there is no visual impact on anyone else. The traffic will primarily go onto Blackstrap Road; peak traffic will amount to 6 cars/hour. That is 1 car every 10 minutes. He has built many subdivisions and he knows that no one wants their backyard to change. They have had three separate meetings at

the Planning Board, and they listened to the public at each meeting. They have worked to design the project to meet the public's concerns and what they felt the Town wanted. The original design included 13 single-family dwellings and 12 condo units; when that was struck down, they redesigned it. He has not been notified by the Town of any changes that would impact his project. Changing in mid-stream is not a good message to anyone that might want to do business in town, nor to anyone residents wanting to make changes to property they have owned for years. The proposed changes are counter to the input from residents that were included in the comp plan; the thoughtful process that created the amendments is being called a mistake. This is what the Town wanted. He said this is not a 55+ age-restricted development; it is designed to appeal to people of that age that want to down-size and stay in Falmouth. Half the units are 2-bedroom, half are 3-bedroom. They are designed to have a 1st floor master with a guest room and an office upstairs.

Kate Heck of Falmouth Road played in the field where one of the developments is proposed; she grew up in this neighborhood and this isn't the Falmouth she grew up in. It is dangerous for kids on the roads. She said the amount and speed of the traffic are a concern. Adding more people and more traffic into that area will make it more difficult. This neighborhood is all ledge and she was concerned with the blasting. She supported the retroactive moratorium.

George Tarbox of Middle Road has lived in Falmouth since 1971. He served on the Fire Department for 40 years. He supported the moratorium with retroactivity. He asked the Council not to pass this mistake onto the residents. it would destroy their residential neighborhood. He described the area around his neighborhood; it is very wet. He said they should take this back and redesign it, but do it for everyone. He said he was in business and lost money sometimes; that is what business is about. He asked the Council to consider the residents.

Alex Hutcheon of Middle Road has lived in Falmouth for 50 years; he selected his home for the character of the neighborhood and the fact that there would be no development in that area. He supported the moratorium and the retroactivity. He didn't want a couple developments to get through as "unintended consequences" before they changed things.

Marie Flaherty of Woodlands Drive thanked the Council for making the changes in 2016. They were in conformance with the comp plan and provided an opportunity for growth and development, allowing people to come or stay in Falmouth by providing for more density. The proposed condos are well-designed, attractive homes. She spoke about the people who would likely purchase in Tuscan Way, quiet, retired couples or young professionals. The Woodlands has condos that fit in the character of the neighborhood. If they make this retroactive it will significantly hurt the developer of Tuscan Way. This parcel is 19 acres, not 3 acres. The development is not restricted to 55+, but the style attracts that demographic. She asked the Council to do what was fair and not pass a retroactive moratorium.

Tom Crosby of Brook Road wanted to find out what would happen to their property values as a result of the development on Tuscan Way. He urged the Council to consider the retroactive moratorium.

Edie Fontaine of Brook Road has lived in Falmouth her entire life. She grew up on Middle Road. She is a commissioner on the Maine Real Estate Commission and believed that part of the draw of the Tuscan Way development would be the school system. She thought it was absurd to suggest otherwise, and felt the 3 bedroom units were designed to attract young families. She thought people would turn down Hamlin Road; she has considered using Hamlin herself. She

understood that a lot of money has been spent, but also didn't feel that this was targeted at them. She was a realtor but was not interested in 32 units.

Donna Crimmin of Brook Road is at the corner of Brookside and Brook. She hears about close accidents all the time at Brookside. The town cut down three trees along her property to improve sight lines for traffic. She didn't want a development to connect to Brookfield.

Judy Cosby lives on the corner of Brookfield and Brook and argued that people move to Falmouth for the schools. It was improbable to think that people would move into 3 bedroom homes and not impact the schools. She remembered all the portables behind Lunt; the same thing will happen at the new elementary if they keep thinking that more density is better. She thanked the Council for considering that a mistake was made and doing something about it.

Chantel Scott of Highland Lake said the Council has to be fair; the retroactive moratorium is fair. Slowing down and making the right decision will prevent them from having unintended consequences twice. She is a developer; she took a single-family home and turned it into a two-unit, but she did it in keeping with the character of Falmouth. This is a way to have affordable housing in Falmouth; in keeping with the character of the neighborhood.

Christopher Hickey of Greenway Drive served on the Planning Board until December. He clarified that the Board's role is to enforce the ordinance; the fact that a project has received technical approval by the Board is not to say that it is a good project. The role of the Council is to be a rule-making body and develop the vision of Falmouth. Builders and developers are unfairly vilified; most people live in a home that was built to make a profit. He thought there are sending a message to developers that is negative, but for everyone they turn away there are two others that think they can make money with a different approach.

Phil DiBiase of Middle Road is a real estate appraiser, has been doing it for 33 years, and is a certified Maine assessor. He is also a broker. He said no one can make a statement that values will go down; no one knows that. A neighbor just split his 1.7-acre lot under the new zoning and is selling it for far more than it was valued. He supports property rights. The change is zoning does not mean that value has gone down; likely it has gone up.

Chair Hemphill closed the public forum.

Councilor Farber clarified that the goal of the zoning ordinance changes was not to create more development, but to direct it away from the rural areas and toward the growth areas. They discovered that people valued the rural areas. When they looked at it, the building permits were being pulled in the rural areas where there is no water, sewer, or larger roads. Growth is happening in Falmouth and this was intended to shift and orient the growth where there was infrastructure. Falmouth has growth caps of 65 building permits per calendar year.

The new zoning amendments add an additional growth cap onto the rural area so that only 26 of the 65 permits can be located there. This controls the pace of growth.

Chair Hemphill pointed out that they actually don't know how these proposed developments would impact the town; they don't have any experience with these in town.

Item 3 Introduction of an ordinance to establish a moratorium on two-family and multi-family subdivision development in certain residential districts.

A public hearing was scheduled for October 23.

Councilor Ferrante asked if the moratorium and retroactivity moved as a piece. Ms. Stearns said the moratorium is the body of action; the question is whether to attach retroactivity to it. The language is drafted to include a statement that the date of applicability is subject to debate by the Council. The can move forward with it, or could strike it.

Atty. Tchoa explained that Council has a couple options; they can introduce the document as written with the retroactivity; they can strike the retroactivity tonight (paragraph 2) and move forward with that moratorium; or they can consider the document as two introductions – of a retroactive moratorium, and as a moratorium that is prospective. They can move to public hearing with both options.

The Council discussed the process moving forward and agreed to move forward with both options. Only one option would be approved.

Town Council, November 13, 2017

Item 10 Ordinance to establish a moratorium on two-family and multi-family subdivision development in certain residential districts.

Chair Hemphill explained that the Council can approve this moratorium with or without retroactivity.

Councilor King moved the ordinance with retroactivity; Councilor Kitchel seconded.

Councilor King felt the language explains the rationale well. She stated her support for the comprehensive plan and its call for diverse housing. Should this measure pass, she voiced her support for correcting the error that created this issue.

Chair Hemphill agreed; the Council needs to step back and reevaluate the consequences of some of their growth ordinance. He was interested in a speedy and workable solution for all parties.

Councilor Ferrante said she hoped they would all commit to doing this quickly. She didn't think there was anything wrong with the amendments passed in July 2016 except that there was clearly a mistake with regards to the duplex and multi-family buildings and it needs to be corrected. She hasn't seen anything that showed that this was the intention of any of the committees or people that worked on the amendments.

Councilor Jones agreed with Councilor Ferrante and supported the retroactive amendment. He didn't want this to be the first step backwards from growth or development. He liked the comprehensive plan and wants to move forward. This moratorium fixes this specific problem. Councilor Kitchel supported the retroactive moratorium. He isn't against development, but was concerned with the fit of these neighborhoods. Once these developments move forward, they are permanent. This will buy the Council some time to review this ordinance and provide clarity on what they want to see happen here.

Motion carried 5-1 (Svedlow).

The Council discussed the next steps to address the problem. Councilor Ferrante requested an introduction by January 23. Mr. Poore proposed that the Council hold workshop meetings at 5:30 pm before the next two Council meetings to work on this item. The Council agreed with this plan.

MARCH 2018 ZONING AMENDMENTS

Town Council, January 22, 2018

Item 8 Introduction of amendments to various sections of the Zoning and Site Plan Review Ordinance relative to amending density allowances for two- and multi-family development in the RA, RB, and RD Districts, expanding the applicability of the RCZO District to two- and multi-family housing, and increasing open space requirements for conservation subdivisions in the F and HL Districts.

Councilor Farber said there are three components to this amendment. The Council could keep them as one group, or to break them apart and hold separate public hearings. The first aspect is an amendment to the density allowances. The Council held two workshops on this issue and determined that they should proceed with a maximum residential density for two- and multi-family development in those districts that is equivalent to the maximum density of a single-family home. The second aspect comes from LPAC. In December 2016, LPAC made recommendations to the Council that the set-aside for open space for development in the rural areas go back to 50% instead of 30%; this recommendation came from suggestions from the public. The third aspect also concerns the RCZO. This overlay currently only applies to single-family development; now that the ordinances make two- and multi-family development possible, it is recommended that the overlay be extended to include those types of developments. All these amendments apply to development that is subject to Planning Board review, and not single-family development.

Councilor Kitchel asked if an accessory dwelling unit would constitute a two-family dwelling; Councilor Farber said no. The accessory dwelling is smaller than the primary dwelling and they travel together on the deed. Those would not be impacted by any of these changes.

Councilor King asked about the RA district; the maximum density is 10,000 sf and each unit of a two-family would have to meet that. She wondered if that was possible on a lot in RA.

Ethan Croce, Community Development Director, said that lot development that doesn't go to the Planning Board does not have to meet the maximum residential density requirement. It would need to meet the minimum lot requirements and the minimum net residential area. It is technically possible to have a duplex on a 10,000 sf lot, but 100% of the lot would have to be buildable – no easements, steep slopes, or wetlands.

Councilor Farber said that would only be if it was a single lot being developed. If it was part of a multi-lot development, it would have to go to the Planning Board and the maximum residential density would apply.

Mr. Croce said this amendment would still allow smaller, single-lot, infill opportunities.

Councilor Farber said the Highland Lake district was created as part of the 2016 amendment; it used to be part of RB. Other than creating the new district, they didn't make any changes to the standards. As it stands, it has a 25% density bonus for two-family homes. She suggested they change this to mirror Farm & Forest so there would be no allowance for two- or multi-family homes, or bring it into line with the other districts and take away the bonus. She would prefer to only allow single-family homes in this district in consideration of the water quality issues at Highland Lake.

The Council discussed how to proceed with that suggestion. Councilor Svedlow wanted to engage the Highland Lake Leadership Team on this issue. Mr. Poore suggested they add this to the ordinance review that the Team is already planning to do.

Councilor Ferrante would like to see the items separated. The RCZO piece seemed separate from the density item for her. She would rather see some language that considers the number of lots in a subdivision as opposed to whether they have to go to Planning Board at all in the RCZO discussion.

Councilor Farber wanted to split the amendments into three; it would be easier for the public and the Council. She asked what would trigger the Planning Board review.

Mr. Croce explained that Planning Board review would be triggered by development that triggered subdivision review as defined by State statute, and by any creation of new lots on a previously approved road.

Councilor Farber asked where Councilor Ferrante would suggest putting the trigger for the open space set aside; Councilor Ferrante didn't know, but she didn't want to impact smaller development with a 50% set aside. That is a lot of land to put aside.

Mr. Croce mentioned that LPAC had also made a recommendation on whether smaller developments be subject to a smaller set aside; that is not included in this package, but it was on their list. His understanding was that the Council had set this aside until the new open space plan is complete and would be considered in the future.

Councilor Farber read the LPAC recommendations on a graded set-aside based on the intensity of development: 50% of calculated NRA plus the unsuitable land in the rural zoning areas; 30% for projects involving 3 or more lots with a project more than 1-acre in growth areas; and 0% for projects of 2 or fewer lots with a project area of 1 acre or less in the growth areas.

Councilor Svedlow asked why they wouldn't consider all of that in the RCZO changes. Councilor King felt the task was given to LPAC and they were directed to wait for the Greening of Falmouth.

Councilor Farber thought they should hold the discussion on any changes to the set aside until the new Greening of Falmouth report if changes are going to come out of it. She suggested they schedule public hearings on the density and the two- and multi-family development in the RCZO, but not schedule a public hearing on the set aside until they hear back from LPAC on whether the new Greening of Falmouth is relevant to it. She thought it was the Council that made that determination.

Mr. Poore pointed out that the change to 50% was only for the Farm & Forest and the HL districts. LPAC has a meeting on Thursday night.

Councilor Svedlow would like to see all the open space set aside changes at one time. Chair Hemphill wanted to see it addressed in this Council year.

The Council asked for LPAC to discuss this at their next meeting. A separate public hearing was scheduled for the residential density item and the extension the RCZO to include two- and multi-family dwellings on February 12. They will workshop the set aside of open space at that meeting as well.

Town Council, February 26, 2018

Item 6 Public Hearing on amendments to Sections 19-8, 19-9, and 19-10.1 of the Zoning and Site Plan Review Ordinance relative to amending maximum residential density allowances for two- and multi-family development in the RA, RB, and RD Districts.

Councilor Farber asked about comments that were made at the MRA hearing and whether those residents would be impacted by the proposed amendment.

Ethan Croce, Community Development Director, said he couldn't speak to the particular examples, but reviewed the impacts of the proposed amendment. A single-lot development would not be impacted; a development subject to Planning Board review would be.

Councilor Farber asked about the review of soil suitability; she thought the Planning Board reviews that anyway. She asked if they were asking for language to be added to the ordinance.

Mr. Croce said there are many elements that govern how many units can be developed on a property. Soil suitability does play into it and the Planning Board takes that into account when determining the location of septic systems and where dwellings can be located.

Councilor King felt reviewing soil suitability was more a Planning Board responsibility.

Councilor Farber felt it was cumbersome to write an ordinance to address this level of specificity. She felt it should be reviewed case-by-case.

In response to Chair Hemphill, Mr. Croce said it is common that the Board would review soil suitability. The density of development and its impact on septic is also governed by the number of bedrooms proposed. A two-unit development with 1 bedroom/unit would have less impact than a single-family home with 5 bedrooms.

Mr. Croce gave a brief history of the work on this issue to date and summarized the proposed amendments. After two workshop sessions last fall, the Council determined the best course of action was to equalize the density between single-family, two-family, and multi-family housing. Councilor Farber said no change is proposed to the minimum lot size. Mr. Croce said that was correct.

Councilor King said the maximum residential density is changing, and it would impact certain developments and not others. Mr. Croce said it would impact development in RA, RB, and RD that requires Planning Board approval.

Chair Hemphill opened the public hearing.

Steve Hundley of Brookfield Road felt the Council has made remarkable progress addressing the residents' concerns. He was comfortable that the maximum density requirements in the district tables are firm and will not change regardless of the type of development proposed. He said the Town's ordinances are very confusing, difficult to understand, and are subject to interpretation and he gave several examples. He said cluster systems in areas without sewer should be treated differently. He supported the proposed amendments.

Chair Hemphill closed the public hearing.

The order was scheduled for March 12.

Item 7 Public Hearing on amendments to Section 19-18 of the Zoning and Site Plan Review Ordinance relative to expanding the applicability of the Resource Conservation Zoning Overlay District (RCZO) to two-family and multi-family development.

Mr. Croce said this item came out of the same workshop session last fall and is a recommendation made by LPAC. Currently the only type of development that is required to

comply with the overlay is single-family housing. LPAC has recommended that the overlay be extended to apply to two- and multi-family housing as well.

Councilor Farber said at the MRA review the Planning Board recommended passage of these amendments with no changes. This recommendation was discussed at the same time as the changes to two and multi-family development. She didn't think those types of development should be treated differently than single-family housing. She looked at this as administrative clean-up; it should be consistent across the board.

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

Councilor Jones asked if the moratorium should be repealed at the same time. Councilor Kitchel said the moratorium has a sunset. Councilor King wanted to make sure the moratorium ends at the same time that these amendments are approved.

The order was scheduled for March 12.

Town Council, March 12, 2018

Item 5 Ordinance to amend Sections 19-8, 19-9, and 19-10.1 of the Zoning and Site Plan Review Ordinance relative to amending maximum residential density allowances for two- and multi-family development in the RA, RB, and RD Districts.

Councilor Farber pointed out that projects that go to the Planning Board are the only ones that use maximum residential density. This amendment would not impact two-family projects on single lots. Any development that would create three units would trigger Planning Board review.

Councilor Ferrante was concerned that there are small projects that have to go to the Planning Board. There are projects that are in the works already that may be affected by this.

Ethan Croce, Community Development Director, agreed that some small projects have to go to Planning Board. This ordinance changes the number of units that can be put onto a piece of land.

Councilor Farber said any small projects that need Planning Board approval are already under the moratorium.

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

Mr. Croce pointed out that the effect of this action repeals the moratorium as of this date. It would have expired as of March 31.

Item 6 Ordinance to amend Section 19-18 of the Zoning and Site Plan Review Ordinance relative to expanding the applicability of the Resource Conservation Zoning Overlay District (RCZO) to two-family and multi-family development.

Councilor Farber outlined the proposed changes. Vice-Chair Kitchel reported that the Planning Board recommended approval of the amendment as presented.

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

MISCELLANEOUS

Town Council, February 26, 2018

Item 1 Public Forum

John Winslow of Gray Road said an unintentional effect of high-density zoning is the effect on the schools. There are two modular buildings at the school campus used for storage. The schools are at capacity and it is only going to get worse. He didn't believe the enrollment projection took any one development into account; it was based on past development and future projections. The effect is that there will be more kids in modular classrooms, which will affect the quality of education and the safety of the students.