

Town Council Meeting Minutes April 25, 2016

The meeting was called to order at 7:00 pm

Roll Call

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

Councilors King and Goldberg were absent.

Vice-Chair Anderson chaired the meeting.

Pledge of Allegiance

Vice-Chair Anderson led those present in the Pledge of Allegiance.

Item 1 Public Forum

Martha Marshall of Woods Road asked why the school board is asking for an increase in the school budget since it will result in a tax increase. Senior citizens can't afford another tax increase. She thought she would have to move because she can't afford to stay in her home. She asked them not to raise the taxes again.

Mike Doyle of Shady Lane asked for a copy of a police recording. He spoke about a lawsuit he recently filed and gave a copy of it to Vice-Chair Anderson.

Item 2 (a) Order to approve the minutes of the March 14, 2016, Town Council (Consent Agenda) Special Meeting.

Item 2 (b) Order to approve the minutes of the March 28, 2016, Town Council (Consent Agenda) Meeting.

Councilor Hemphill moved the consent agenda, Councilor Farber seconded. Motion carried 5-0.

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

Councilor Hemphill reported on the 2016 eco-excellence awards from ecomaine. Out of 13 winners this year, two were from Falmouth: Stefan Andren from Peak Dental in the business category, and Jean Lee from Falmouth Elementary in the community division.

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

Councilor McBrady moved to appoint Breana Behrens to LPAC; Councilor Kitchel seconded. Motion carried 5-0.

Item 5 Order to appoint election workers for the 2016 election.

Councilor Farber moved the order; Councilor McBrady seconded. Motion carried 5-0.

Item 6 Order to schedule the Budget Validation Referendum's (BVR) statutory budget meeting to be held on Monday, May 16, 2016, as required by M.S.R.A.1485 & 1486.

Councilor Kitchel moved the order; Councilor Hemphill seconded.

Vice-Chair Anderson opened the public comment period; there was no public comment.

Motion carried 5-0.

Item 7 Public Hearing and Order to approve victualers licenses for vendors participating in the Cumberland Farmer's Market Association.

Vice-Chair Anderson opened the public comment period; there was no public comment.

Councilor Farber moved the order; Councilor Hemphill seconded.

Councilor Farber asked for clarification that these licenses would only allow these vendors to operate at the Farmer's Market; if they want a food truck they will have to come back at a later date. Town Clerk Ellen Planer confirmed that is the case.

Motion carried 5-0.

Item 8 Public Hearing and Order to approve a new liquor license for Norumbega Cidery, LLC.

Vice-Chair Anderson opened the public comment period.

Noah Fralich, owner of Norumbega Cidery, provided the Council with some handouts, and said this was not a license but an approval that goes to the State; the State then approves a permit to allow him to sell at the Farmer's Market. He already has a Federal license and a State license to produce alcohol, as well as this State license that has to be renewed annually. He has also taken an ID checking course. He participates in the Brunswick Farmer's Market in the winter and has for the past two years. He said the director of the Maine Federation of Farmers Markets emailed to say she hasn't heard of any problems resulting from alcohol sales at the markets. Craig McCabe, a regulator from the Maine Bureau of Alcoholic Beverages and Lottery Sales, has said they have had little complaints about alcohol sales at farmers markets. He encouraged the Council to approve his application.

Joann Fryer of Cumberland spoke in favor of the application; she has purchased a 40 acre farm in Cumberland and they provide apples to Mr. Fralich and others for making hard cider. The apples are grown locally and the cider produced locally. Hard cider is a booming industry and is coming to Maine. People are not consuming the cider at the market, just buying it there. She encouraged them to give this product a place to be sold locally.

Public comment period closed.

Vice-Chair Anderson said there is a Town ordinance that prohibits the sale of alcohol on Town-owned property; a portion of this site is on Town-owned property.

Mr. Poore said both the Police Chief and the Parks Director have written letters expressing their concern about the sale of alcohol on this property. The Farmer's Market has struggled to find a location in Falmouth due to zoning. Last year they were located on the Legion property, with some spill-over onto Town property. The Town has a lease agreement with the Legion to allow parking for the fields; they have considered this as an extension of town property in order to allow the market to operate.

Councilor Farber said if the land is private the ordinance would allow the sale of alcohol, but the zoning ordinance doesn't allow the Farmer's Market on private property. If the land is public, the Farmer's Market can operate, but they cannot sell alcohol.

Vice-Chair Anderson agreed that the majority of the market operates on Legion property, which is a violation of zoning.

Councilor Farber said they are stretching it no matter which way they interpret this. She asked for a legal interpretation.

Councilor Kitchel said if they are allowing the market to operate on private property, they are overlooking the zoning violation.

Mr. Poore said the Town has public interest in the parking lot due to the lease the Town has to serve the ball fields. The Town has right and interest to the property through the lease, but the Town does not have title. The interpretation that the market is allowed to function there is based on that right and interest.

Councilor Kitchel asked if the market could allow the alcohol vendor to operate from the public property. He said the Town staff both objected to the sale due to the proximity of the site to the ball fields and the presence of children there. He observed that the majority of the time the market is functioning there are no kids on the ball fields. He supported approving the license.

Councilor Farber agreed with Councilor Kitchel and supported the vendor operating on the private land portion. These are closed containers; the alcohol will not be served on-site, and the vendors are required to check ID's. It is limited to a specific block of time, one day a week.

Councilor Hemphill asked Mr. Fralich about his sales at other farmer's markets.

Mr. Fralich said he has a booth or table with products displayed. He had brochures and pamphlets with information, but there is no sampling; there are specific prohibitions on sampling at farmer's markets.

Vice-Chair Anderson asked about the type of bottles and the alcohol content of the cider.

Mr. Fralich said they are 22oz Belgian-style brown beer bottles, and his product varies between 6.7% and 6.9% alcohol content. It is equivalent to a strong beer or a weak wine.

Councilor Hemphill felt the intent of the ordinance is to prohibit the use of alcohol and tobacco on Town property and not the sale of closed containers that are intended for consumption at home.

Vice-Chair Anderson said the market is located where it is because it adjoins public land. If that condition was not in place, the zoning would not allow them to operate there. The market is getting the benefit of the Town's involvement in that way; he asked why they wouldn't be subject to the ordinances prohibiting liquor. He pointed out that this would open the door for other craft beers or wineries and potentially change the market.

Councilor Farber asked about postponing the order; this is not public land, it is leased space. She didn't object to the sale of alcohol under the State permit, but was struggling with this situation. She wanted the market to be in Town, but this isn't public land.

Vice-Chair Anderson asked on what grounds they could legally deny this. It is not on town land.

Councilor Kitchel pointed out that the language of the ordinance is vague; it doesn't speak to either sale or consumption, just that it is prohibited. He felt the language needs to be cleaned up. He agreed with Vice-Chair Anderson that they may not have the right to deny this application.

Councilor Farber disagreed; she felt they do have the right. As the dispenser of the license, they could decide there were too many bars in town and deny another one. A Council could decide to not issue any.

Mr. Poore clarified that towns only approve licenses that are consumption based; if there were a problem they could revoke it for a business. This application is more related to a retail sale, which the Council doesn't approve. This is the only type of retail license that goes through the town. He wasn't aware of anything in the statute that allows them to deny an application; the real issue here is whether it is on Town property or not. He said if they are inclined to allow the Farmer's Market to operate in this location for the next year while they work through the situation, and they are inclined to allow this vendor to operate as part of the market, they can do that.

Vice-Chair Anderson pointed out that this applicant has had success, and comes recommended by the market. He is a responsible vendor and will be operating during the day. He felt if the activity took place wholly on Legion property, he would not oppose it.

Councilor Farber moved the order with the understanding that this vendor would physically be located on private land; Councilor Hemphill seconded.

Mr. Poore said the application has a signature on it from the previously authorized agent of the American Legion, dated April 2015. That signatory is no longer a representative of the organization so he asked for an updated signature from the Legion.

Councilor Farber asked if this license expires after a year; Mr. Poore confirmed that was correct.

Councilor Farber moved to amend the order to add the condition of an updated signature from the property owner; Councilor McBrady seconded. Motion carried 5-0.

Mr. Fralich said he would be happy to update the signature. He clarified that this application is a one-time thing; the permit from the State is renewed annually and is dependent on the location. He doesn't have to come back to the Town every year unless the location moves.

Councilor Farber said the vendor could only function as part of the Farmer's Market, and not individually.

Amended order carried 5-0.

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 sewer 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.

Item 10 Order regarding proposed amendments to the West Falmouth Crossing Tax Increment Financing District and related Development Program.

Mr. Holtwijk discussed the recommendations of the Route 100 committee for improvements to Route 100; the project is estimated to cost around \$11 million. They anticipate a portion of the money to come from MDOT, and the rest to come from the West Falmouth TIF district. This requires an extension of the term of the TIF district by 5 years, and an amendment of the list of eligible projects. They are also proposing to remove some of the land that is included in the district, as it is conservation land. This would be the third amendment of this district. Any amendment requires approval by the Council, after which it will be sent to the Maine Department of Community and Economic Development for final approval. The Council held the required public hearing on March 28, and there was no public comment. This amendment would allow for the cost of the project not covered by the DOT to come from the properties within the district; it will not impact the Town's mil rate.

Vice-Chair Anderson opened the public comment period; no public comment.

Councilor Farber moved the order; Councilor McBrady seconded.

Councilor Farber asked if there was a limit to the number of amendments they are allowed to a district; Mr. Holtwijk said there is no limit.

Motion carried 5-0.

Item 11 Public Hearing and Order regarding the June 14, 2016 referendum question pertaining to the proposed Route 100 Infrastructure Project. This Public Hearing is in accordance with M.R.S.A 30-A § 2525 (5).

Vice-Chair Anderson opened the public comment period; no public comment.

Councilor Hemphill moved the order; Councilor Kitchel seconded.

Councilor Farber asked if they could choose not to do the project if the DOT money did not come through. Mr. Poore said it was similar to the library project; if the funds didn't come in at all, the project couldn't be done in a way that was similar to what was presented to the voters, and so they wouldn't do it. If it could be done substantially similar to the way it was presented, they could go forward.

Vice-Chair Anderson said it is not specifically stated in the bond order that the bond would be paid entirely from the TIF and would not impact the mil rate; he wondered if that is because it is a general obligation bond. Mr. Poore said that is correct; even adding a note to the referendum would make it look like a revenue bond.

Councilor Farber thought they had the same issue with Route 1; Mr. Poore said he would research that.

Vice-Chair Anderson said the revenues from the TIF district would be more than adequate to pay the bond.

Mr. Poore said staff will send out a town-wide mailing to inform the public about the referendum.

Motion carried 5-0.

Item 12 Order to approve the FY17 Municipal and School Department Budgets in accordance with the Town of Falmouth Charter, Article 5, Sec 502.

Vice-Chair Anderson opened the public comment period.

John Winslow of Gray Road pointed out that this school budget is 40% higher than it was in 2011 for 3 fewer students; in the same time the municipal budget has only increased 15%. They have improved the school facilities, and he was told that those were one-time expenditures that would save the town money. He asked where those savings were. He said specialty programs that only benefit a small number of students can easily be cut: he suggested cutting the greenhouse, downsizing the AP classes by teaming up with the University of Maine, and continuing the pay-to-play program. He encouraged the Council to reject the school budget.

Public comment period closed.

Councilor Farber pointed out that revenues for the schools continue to decrease; increases in revenues for the Town, including excise, property values, and TIF revenues all combine to reduce the valuation and therefore the availability of state revenues for the schools. It wasn't completely fair to compare the Town budget with the School Department's budget. Both sides work tremendously hard to bring in fiscally responsible budgets. The municipality has tools on hand that the school department doesn't. The school budget goes before the voters and she encouraged people to vote.

Councilor Hemphill echoed Councilor Farber; the staff of both sides worked very hard on these budgets and he felt this was a sound result.

Councilor Farber moved the order; Councilor McBrady seconded.

Vice-Chair Anderson was sensitive to the comments from Ms. Marshall about the impact of the taxes on senior citizens. He felt they need to work on a program of property tax relief for seniors below a certain income level. He pointed out that 3.5% of the proposed 5% increase in the school budget is due to increases that were negotiated with the teacher's union and they have no choice about that; the remaining 1.5% is due to increases in the special education program, which are sorely needed.

Motion carried 5-0.

Item 13 Order to approve a supplemental appropriation from unassigned fund balance in the amount of \$200,000 for transfer to the Open Space CIP Fund.

Vice-Chair Anderson said this is essentially use of existing surplus in the current year to fund open space in the coming year and still maintain a flat mil rate.

Councilor Farber moved the order; Councilor Hemphill seconded.

Vice-Chair Anderson opened the public comment period; there was no public comment.

Motion carried 5-0.

Item 14 Order to approve the FY17 Sewer Department Enterprise Budget.

Vice-Chair Anderson opened the public comment period; there was no public comment.

Councilor Farber moved the order; Councilor McBrady seconded. Motion carried 5-0.

Item 15 Order to adopt new sewer service rates, effective beginning with the normal billing cycle occurring after July 1, 2016 to fund debt service for the Mill Creek Pump Station and Force Main Upgrade.

Vice-Chair Anderson said this is an increase in the sewer rate of 8.5% and is the first rate increase in 8 years. This increase will support the upgrades at the Mill Creek Pump Station.

Vice-Chair Anderson opened the public comment period.

Christopher Hickey of Greenway Drive spoke with the Wastewater Superintendent recently about how the wastewater ordinance treats an accessory dwelling unit (ADU) as opposed to a two-family dwelling unit. A home with four bedrooms would pay less than he does due to the way the fees are structured. He asked if there was a way to appeal the way the sewer fee is applied to his property. He pointed out that ADU's are often utilized by seniors and doubling the sewer fee would have even more impact than a tax increase.

Public comment period closed.

Councilor Farber asked if they can pass this and then amend it; Mr. Poore said they would have to wait a whole year. It needs to be committed the same way as taxes.

Councilor Farber said she would like to review the issue brought up by Mr. Hickey; Mr. Poore said opening up the policy discussion will take a lot of research. He suggested they add this to the annual workplan retreat; this is a bigger discussion than a two-week delay would allow.

Mr. Poore will review the issue with the superintendent.

Councilor Hemphill moved the order; Councilor Farber seconded.

Councilor Kitchel asked if multi-family includes in-law apartments.

Mr. Hickey said it's a matter of classification; a single-family home with an ADU is not the same as a multi-family, though it is often referred to as a multi-family. He thinks clarification in the sewer ordinance might solve the problem.

Motion carried 5-0.

Item 16 Presentation by Princeton Properties of a proposed expansion of the Foreside Estates apartment complex on Clearwater Drive and need for a zoning amendment.

This item was deferred because the applicant was not able to attend the meeting tonight.

Item 17 Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider the disposition of real estate rights and economic development, pursuant to 1 M.R.S.A. § 405 (6) (C).

Vice-Chair Anderson moved the order; Councilor Farber seconded. Motion carried 5-0.

The Council entered executive session at 9:31 pm and did not return.

Respectfully submitted,

Melissa Tryon
Recording Secretary