

Town Council Meeting Minutes July 24, 2017

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

Roll Call

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

Councilors Svedlow, Kitchel and Ferrante were absent.

Pledge of Allegiance

Chair Hemphill led those present in the Pledge of Allegiance.

Item 1 Public Forum

Fred Chase of Stagecoach Road asked the Council to consider an amendment to the growth ordinance. This ordinance should not include those areas without sewer until public sewer is available. It is important that lot sizes are large enough to accommodate a septic system/leach field if public sewer is not an option. He spoke about the conditions along the waterways 50 years ago, when direct discharges into the water and pollution from factories made people sick, and how far the Town has come since then. There is a lot to a full-blown septic system, and if people take full advantage of the minimum lot size, there is no room for a full leach field unless the soils are perfect, which is unlikely. He did not support community systems.

Item 2 Order to approve the minutes of the June 19, 2017, Town Council (Consent Agenda) Organizational Meeting.

Councilor Farber moved the order; Councilor King seconded. Motion carried 4-0.

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

Councilor King said LPAC+ is charged with updating the open space plan. They have met and have decided to limit the scope and recommendations of the report to properties in conservation and production.

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

The committee had no report.

Item 5 Ordinance to amend the Code of Ordinances regarding permanent signs.

Councilor Farber moved the ordinance; Councilor Jones seconded. Motion carried 4-0.

Item 6 Order to adopt amendments to the Route One and Exit 10 Design Guidelines to incorporate changes required under the US Supreme Court decision Reed v. Gilbert.

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

Councilor Farber moved the order; Councilor Jones seconded. Motion carried 4-0.

Item 7 Ordinance to amend the Code of Ordinances, Chapter 19, Zoning and Site Plan Review Ordinance regarding uses in the VC Districts.

Councilor King moved the ordinance; Councilor Farber seconded. Motion carried 4-0.

Item 8 Workshop with the Conservation Commission on 2016-2017 Work Plan item related to wetlands protection.

Nancy Lightbody, co-chair of the Conservation Commission, discussed the Council's work plan item and the Commission's work to date. She discussed the history of the 2009 Natural Resources Report drafted by LPAC. The report was tabled by the Council at the time and has not been acted upon since. The Commission recommends that the Council move forward with acceptance of this report and authorize staff to work with the Commission to draft ordinance language to support the recommendations of the report. They recommend regulating all vernal pools, not just significant ones, and expanding the buffer zone from 50 feet to 100 feet. They want the Town's regulations to be in conformance with the Natural Resources Protection Act (NRPA). The recommendations would also require developers to map and locate all vernal pools instead of relying on the town's mapping which, while it was extensive, only includes public lands. They recommend these regulations be adopted for larger scale developments and not for small, single-family home development.

Councilor Farber wondered how the Town's regulations could be less than NRPA if NRPA is mandatory.

Amanda Stearns, Community Development Director, said NRPA is mandatory. What LPAC found in 2008 was that the Town was more restrictive in some ways and less restrictive than the State and Army Corps. In those cases where the town is less restrictive, NRPA would apply. In those cases where the Town is more restrictive, it would take precedence over NRPA. The committee looked at the most current science when they reviewed the regulations and found that some regulations were ineffective. They wanted to align the Town's regulations with the most current science available, while also taking into account the needs of developers as well as smart growth principles.

Councilor Farber wondered if there was a way to implement this in stages.

Ms. Lightbody felt the change to regulate all vernal pools instead of just the significant ones is the most important piece.

Ms. Stearns said the list of changes included in the report are connected; it could be dissected to implement it in phases. It would be a lot of work for staff to review it and recommend pieces.

Chair Hemphill said he was part of the effort of creating the 2009 report. He spoke about the lack of a comprehensive map of vernal pools in town.

Councilor Farber agreed about the map and saw some value in the short term of placing the burden on the developer of having the property surveyed for vernal pools. She wanted to move that piece forward. She felt it was an important step.

Councilor Jones agreed; the trend has been for municipalities taking a stronger stance in protecting local environmental resources. He supported the recommendation to adopt stronger standards; they need to protect vernal pools in Falmouth.

Chair Hemphill felt it was useful tool in guiding smart development; it would help create smart development while protecting natural resources. The recommendations here are worthy of additional consideration.

Councilor King liked Councilor Farber's suggestion for a tiered approach. She wondered if this was effort more likely to have support now than it was in 2009. It is a strong recommendation.

Councilor Farber thought the effort started in 2006/2007 and concluded almost 3 years later. The Council changed over those years, and she thought the appetite for the work diminished. The other challenge is communicating the goals clearly to the public. She felt people at the time didn't understand the exemptions fully and that's why it got emotional.

The Council discussed next steps. Ms. Lightbody said the Commission is willing to continue working on it. Chair Hemphill suggested it be added to CDC's workplan for the year. Councilor King wondered if staff might be able to identify any of the items that might be implemented easily to protect vernal pools as a starting point. Mr. Poore said this is a complex, comprehensive issue that will need committee oversight; it needs to start with a committee. Once staff has some guidance, they can go forward with ordinance work. Councilor Farber suggested they refer it to CDC, with the direction that the Committee use the resources of the Commission and LPAC.

Councilor King asked if the vernal pool map would be updated every year. Chair Hemphill said the map hasn't been updated since 2005 when the Commission was able to map and identify pools. The pools don't change, but there are more pools out there than are shown on the map. Councilor Farber supported updating the map, even if it is with just known information and wondered if that could be another effort. Ms. Lightbody said there has been more mapping since then, but the map hasn't been updated.

Councilor Farber asked if there is a list of vernal pools on public lands, in addition to what is on the map.

Bob Shafto, Open Space Ombudsman, said the town has a lot more pools than are shown on the map. He has identified many more on Town owned land. There are a lot more out there than people think.

Councilor Farber asked what it would take to add the known pools to the map; Mr. Shafto said he has GPS located a lot of them on Town properties. Chair Hemphill said it would take training and a lot of volunteer hours to properly document them. There are state and federal best practices to identifying them and determining significance. It's possible but would take a lot of effort.

Councilor Jones pointed out that locating pools on Town land might not be worth the effort, since those are already protected. He was more concerned with pools on private land. Chair Hemphill thought they could offer the opportunity for people to have pools located on their private property.

Ms. Stearns said the goal of the 2005 map was first to locate pools and then serve as a regulatory tool. The Planning Board, through the RCZO, requires vernal pools to be identified on development plans but there was no mechanism in the ordinance to require protection of those pools since they are not mapped. Staff could identify key points of the ordinance that could be reviewed first.

The Council referred the item to CDC and recommended that Conservation Commission and LMAC look into public education around this issue as well as updating the 2005 vernal pool map.

Item 9 Discussion about two proposed open space acquisition parcels and a stream restoration project.

Mr. Poore discussed the Vandermast property; it is a major connection in a large, contiguous open space corridor that runs from Windham through West Falmouth to Cumberland. It is a 60-acre parcel and the Town would apply for a grant from the LMF program to help fund the purchase. Hobbs Brook would also be protected as part of this purchase, and additional grant money would be available for that. It is a significant property and was highly rated by LMAC.

Mr. Shafto discussed how the open space parcels link. He said there is a tunnel under the turnpike in one location, and the Town has a trail that utilizes that tunnel. He explained that LMF only funds acquisition. The other grant would include funds for restoration for two locations on Hobbs Brook.

Mr. Poore discussed the Adam parcel. The goal of this acquisition is primarily stream restoration. The Adam property abuts Riverpoint and, like that parcel, has significant access issues and is impacted by a conservation

easement. This purchase would be almost 100% funded by grant money. There is 300-400 feet of riverbank than has been seriously eroded. The project budget would be about \$350,000 including both purchase price and restoration work.

In response to Councilor Farber, Mr. Shafto said there are water and electrical lines that cross the property.

Councilor Farber asked if these parcels would be incorporated into Riverpoint; Mr. Poore said yes.

Councilor Farber asked how they would access this land; Chair Hemphill said they would use the aluminum foot bridge.

Mr. Poore said part of the Town's match for the grant would be to put Riverpoint into conservation. Mr. Shafto said the portion where the barn is would be exempt from that easement, in case they ever wanted to put in a parking area.

Councilor King asked if the impacted riverbank is on town land; Mr. Shafto said it is.

Councilor King asked how the purchase helps the restoration project. Mr. Poore said the restoration project is the primary purpose of the grant, but they will allow some acquisition of land. Typically, this grant doesn't give out more than \$300,000. The purchase of the property along with the restoration makes the grant application more appealing. Mr. Shafto said the grantors could strip the purchase from the grant and choose to fund the restoration only, but it's worth a try.

Chair Hemphill said the Falmouth Land Trust has an easement on the property, and the Town maintains a trail across this parcel to link Riverpoint to Falmouth Road. Mr. Shafto said the purchase would give them another access point to the eroded area for the heavy equipment needed to do the restoration work.

Item 10 Order to approve a supplemental appropriation from the Open Space fund in the amount of \$10,000 for the Piscataqua River West Branch Restoration project.

Mr. Shafto explained that the Town can do several things before the grant might be awarded. Spring runoff next year will take another several feet of riverbank in this area. The Town can prevent that by cutting some of the currently leaning trees. This money would pay for an arborist to help with that project. Also, the Town's application would be more competitive with an engineering plan for the restoration.

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

Councilor Farber moved the order; Councilor Jones seconded. Motion carried 4-0.

Item 11 Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider the acquisition of real estate rights, in accordance with 1 M.R.S.A. § 405 (6) (C).

Councilor King moved the order; Councilor Farber seconded. Motion carried 4-0.

The Council entered executive session at 8:51 and did not return.

Respectfully submitted,

Melissa Tryon
Recording Secretary