

Town Council Meeting Minutes September 11, 2017

The meeting was called to order at 7:01 pm.

Roll Call

All Councilors were present and answering roll call.

Item 1 Order to authorize the Town Manager to execute an option agreement to purchase a parcel of land consisting of approximately fifty-nine (59) acres, more or less, located near Hadlock Road as shown on Town of Falmouth Tax Map R06 Lot 057 and a portion of Tax Map R06 Lot 056, and to approve the use of \$30,000 from the Open Space fund as a match for a Land for Maine's Future Grant.

Town Manager Nathan Poore said this is a key piece connecting a vast amount of open space in both Falmouth and Cumberland. The Town is applying for a Land for Maine's Future (LMF) grant to fund this purchase. This action will authorize the option agreement only and not the final purchase.

Councilor Svedlow asked if the land would be managed similarly to other parcels. Chair Hemphill said that is correct. Mr. Poore said the Town is also offering to put a significant portion of Hadlock Forest into conservation as an additional match for the grant.

In response to Councilor King, Chair Hemphill said the Falmouth Land Trust would hold the easement.

Councilor King asked if there would be a fee associated with that easement. Mr. Poore said there would be.

Bob Shafto, Open Space Ombudsman, said LMF does not include stewardship fees as an allowable cost in the award budget. The stewardship fee would be a fee for the easement.

Councilor Svedlow asked if the LMF funds would come through from the state if the grant was awarded. Mr. Shafto discussed the history of previous LMF grants; there is one the Town was awarded but the money has still not been received.

Mr. Shafto said this is a \$5 million competition, but he felt this application would be competitive.

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

Councilor Farber moved the order; Councilor King seconded. Motion carried 7-0.

Item 2 Order to authorize the Town Manager to execute an option agreement substantially in the form presented at this meeting to purchase two parcels of land as shown on Town of Falmouth Tax Map R05 Lot 038, and Tax Map R05 Lot 039.

Mr. Poore explained that this property is subject to a grant for a stream bank restoration project. He said this option agreement is conditioned on the amount of the appraisal and the Town receiving the grant.

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

Councilor King asked which grant they have applied for. Mr. Shafto said the Maine Natural Resource Conservation Program fund, which is a mitigation fund. These monies come from developers that have impacted wetlands and have to pay a fee to the state and are used for stream restoration projects.

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

Item 3 Order to authorize the Town Manager to accept easements from five property owners along Middle Road for the public use and maintenance of storm drain culverts on private property.

Mr. Poore said the Public Works staff have put this together and all the property owners are willing parties in this action.

Councilor Farber asked if the easements are in perpetuity or if they are short term for improving the drainage.

Jay Reynolds, Public Works Director, said these are permanent easements so the Town can maintain the inlets and outlets to maintain the drainage.

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

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

Item 4 Resolution to proclaim September 2017 as Falmouth Memorial Library Month.

Councilor Farber introduced the resolution. September is Library Card Sign-up Month.

Chair Hemphill opened a public comment period.

Andi Jackson-Dowling, Falmouth Memorial Library Director, spoke about how important library cards are to students who are going back to school. She said library cards confer a civic membership and provide the keys to the world. Falmouth Memorial Library has over 6000 library cardholders and she urged residents to visit and sign up for their library card.

Marsha Clark, Library Trustee, said they have raised over \$2 million towards the capital campaign; they still have \$800,000 to raise. They are sending out an appeal letter soon and she asked the community to support the library. She spoke about the children who use the library for games and for books to supplement their schoolwork, the business people who use it for work and for information, the programs the library hosts on community issues and history, and the seniors who use it for programs, and as a resource for computer help.

Public comment period closed

Councilor Farber moved the resolution; Councilor Ferrante seconded. Motion carried 7-0.

Item 5 Discussion regarding policy decisions for implementation of Council work plan item – Resource Conservation Zoning Overlay District amendments.

Amanda Stearns, Community Development Director, explained that the Council's workplan for last year included a task, assigned to LPAC, to examine the amount of open space required to be set aside in both the rural and growth areas in town. LPAC reported their findings to the Council earlier this year, and this year's Council workplan assigned staff the implementation of the policies recommended by LPAC. Town staff have reviewed those recommendations and have worked with Councilor King on draft amendment language. They have identified several key policy questions that need to be addressed before the language can be finalized. Firstly, LPAC has recommended that all housing types should be treated the same with regards to meeting the RCZO requirements. Currently RA, RB, and RD allow multi-family housing, but only single family housing is required to comply with RCZO; all other development in those districts need to conform with the underlying zoning only. The second item related to the treatment of minimum open space acreage.

Councilor Farber supported the staff recommendations regarding the second item, and supported Councilor King and an additional councilor to work with staff on the first item. Chair Hemphill volunteered to work with Councilor King and staff on the first item.

Councilor Ferrante asked about the current situation. Ms. Stearns said any single-family home must comply with the RCZO requirements. LPAC has said that any type of residential development should also have to comply, so that it is fair. Without that, multi-family development might have to go through subdivision and meet the underlying zoning standards but not the RCZO requirements.

Councilor Svedlow clarified that the proposal was for Councilor King and Chair Hemphill to work with staff to draft language to bring back to the Council for review and approval. Ms. Stearns said that is correct.

The Council discussed the recommendation from LPAC, the policy questions that were raised as a result, and the best method to move forward. Options included assigning two councilors to work with staff, assigning a three councilor sub-committee, or assigning it to CDC. Councilor Kitchel supported Councilor King and Chair Hemphill working with staff. Councilor Ferrante wanted to slow the process down.

Councilor King moved, under Council rules section 16-c, to take the related item 6 out of order to provide a fuller picture of the situation; Councilor Farber seconded. Motion carried 7-0.

The Council returned to discussing this item after discussing item 6.

Councilor Farber proposed a three-member Council subcommittee consisting of Councilors King, Svedlow and Hemphill to work with staff on the issue. Councilors Kitchel and Jones supported the suggestion.

Ms. Stearns was concerned that this proposal would prolong the time it would take to address the issue.

Councilor Svedlow said that, since this issue has some attention from the public, he would feel more comfortable with a more transparent process. Councilor Ferrante agreed.

Councilor King offered to step out and allow Chair Hemphill and Councilor Svedlow to take on the task, in order to streamline the process. Councilor Kitchel supported this suggestion. The Council agreed with this proposal.

Chair Hemphill and Councilor Svedlow will work with staff to discuss policy questions and assist with drafting ordinance language for the Council to review.

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.

The Council returned to item 5 on the agenda.

Item 7 Presentation from the applicant of the Homestead Acres, LLC Contract Zone Proposal.

Councilor Ferrante recused herself from this item. She owns property that is part of this development.

Matthew Ek of Sebago Technics, representing the applicants, discussed the history of the project to date. The contract zone was prompted by the 150-lot width requirement in the VMU zone, along with requests for changes in the lot areas, setbacks, and the roads. VMU doesn't require open space or parks, both of which they are offering with this development. While smaller parks would be maintained by the homeowners' association, one larger park would be given to the Town. That park would include amenities such as playground equipment.

Dave Chase, applicant, said he has had his eye on developing this property for years. He puts a lot of thought into what he does. This property isn't a high-value recreational property or valuable open space. It is on sewer and water, and natural gas could be brought here. There are almost no wetland impacts or sensitive environmental impacts. It is in a great location. 36 of these lots would be "entry-level" housing priced at around \$280,000 or less, providing a level of housing that is not available in Falmouth. The market rate housing would average \$350,000. They are also proposing 48 apartments, providing needed short-term housing in Falmouth. The property is in the growth area, fits with the comp plan, and is supported in theory

by the Route 100 Committee, LPAC, and FEIC. They will address the traffic concerns, treat the stormwater runoff, and do everything necessary to protect the east branch of the Piscataqua. He recently completed a development of similar size in Cumberland. He said final approval of this plan is 9-12 months out; it is a big project and will take time at the Planning Board level and he asked for some show of support from the Council.

The Council discussed the process for reviewing the item and how to move forward.

Councilor Farber was concerned that reaching a contract agreement with the applicant will signal the Planning Board to do less of a review than they would typically. Ms. Stearns said that the underlying existing ordinances will still be in effect unless the Council expressly takes away the Board's authority to address something.

Councilor Farber asked for clarification on the request for a growth cap reduction. Mr. Ek said they are looking for a growth cap reduction for the apartments because they are all together in one area so it makes sense to do them all at once. The first phase will be the most expensive to build due to the infrastructure, so they would like to ensure they can get at least half of the homes built. He showed the Council the proposed phasing plan. They are only requesting a growth exemption for half per phase.

Ms. Stearns said the option put forward by the CDC was that, for each phase and type of housing they have to pull as many permits as they can. In the first year, if all 24 multi-family are available they have to pull those first, and use the exemption for the other 24. They are going to pull permits as they are available. The CDC felt very strongly about keeping as close to the growth cap as much as possible. The exemption for the multi-family will absolutely be necessary, as the cap is only 24 and they are building 48.

Councilor Farber said the requested setbacks would be even smaller than those allowed in RA. Ms. Stearns said that is correct.

Councilor Farber asked about the footprint of the building of the multi-unit buildings; the ordinance limits multi-family buildings to 6 units, and these have 12 units. Mr. Ek said they are three-story buildings, with 1-3 bedroom units. Mr. Chase said the footprint is 60x80 and they are three-story buildings.

Councilor Farber asked for a comparable building size in Town; Ms. Stearns said Blueberry Commons in Oceanview is a similar size. Councilor Kitchel said the development in Cumberland on Route 1 is similar.

Councilor Farber asked if affordable housing has a sunset typically; they are proposing a three-year sunset on their affordable housing units. Mr. Ek said if someone wants to add to their home, they need the ability to get the value of the improvements out of the home when it is sold.

Ms. Stearns said the term "affordable housing" in the Town's ordinance states that it is permanent, and it would be exempt from the growth cap. This is why they are referring to it as "entry-level", to avoid confusion. Treatment of affordability varies widely across developments. She said the three-year sunset was a compromise between the CDC and the developer. Mr. Poore thought that Habitat for Humanity has a similar approach; it is more about getting families into the house.

Councilor King thought they discussed a deed restriction on additions to the entry-level homes to keep them entry-level. Ms. Stearns said they decided on no garages and no accessory dwelling units. That would be on the deed.

Mr. Chase said the entry level homes are going on 50-foot-wide lots. He thought there might be enough room for a single-car garage, but they discussed no accessory dwelling units on any of the lots. He said the sales price will allow people to get some good equity even without additions or improvements.

Chair Hemphill asked him to address some of the comments raised at the Planning Board meeting. Mr. Ek said traffic was a big concern; they have a traffic study underway. They have done sight distance verifications and traffic counts and that would be part of the traffic movement permit required by the Planning Board. The traffic study will be ready soon. They have not addressed stormwater yet beyond concepts. They are waiting for input from the Council before they go to full engineering and design of site improvements.

Councilor Svedlow asked if they would require a DEP permit; Mr. Ek said yes.

Councilor King asked about the impact of this development on the Town's budget – school attendance, bussing, snowplowing, etc. - and whether they should assess that as part of their approval.

Councilor Farber felt it would be helpful to get school enrollment projections from the school department.

Mr. Poore said there is a built-in review process for any subdivision. He discussed some of the pieces of the project that would be subject to staff review: sewer, roads, street lighting. Increases in Fire and Public Safety are based on population numbers. The items that need scrutiny are traffic and school impacts. He would contact the school superintendent about an enrollment projection.

Councilor Farber wondered what the current zoning would permit for single-family homes on this property. Mr. Ek said that, based on net residential area for 10,000 sq foot lots, it would allow 153 homes. That doesn't account for the lot layout. Current zoning would not allow them to develop the number of single family homes they are proposing.

Ms. Stearns pointed out that this development could be built out with this density with two-family and multi-family units as they are treated in the ordinance currently.

Councilor Kitchel asked about the side yard setbacks being reduced to 8 feet; they seem very small to him. Mr. Ek said these are 50-foot-wide lots; 16 feet of setbacks would leave 34 feet to build the homes. They are also looking for a reduction on the front yard setback from 25 to 15.

Councilor Kitchel asked about the side setbacks for the Cumberland project; Mr. Chase said those are 9 foot setbacks, but these are slightly narrower lots. The 8 feet includes the overhang, so the distance is actually 9 feet from the foundation. Mr. Ek said other towns have smaller setbacks, and they have no problem selling those homes.

The Council discussed next steps. Mr. Chase advocated for a public hearing soon, to get feedback. Mr. Poore suggested a response from the applicants on all the comments they have received so far.

The Council scheduled a public hearing for their meeting on Wednesday, October 11.

Item 8 Introduction by Councilor Farber for conditional rezoning for the construction of a Tier III Personal Wireless Facility on Falmouth Road, Map-Lot R04-022.

Scott Anderson, representing Verizon Wireless, explained there are two types of cell tower installation allowed in Falmouth. Installing on an existing structure is allowed anywhere in Town but installing a new tower requires this rezoning process. They have proposed a 110' tower on an 82-acre lot. They have identified coverage limitation and deficiencies in service in Falmouth. The increase in data downloads has stressed the existing structures; adding this additional structure will add coverage and increase capacity in the area. They would install a tower, equipment, backup power and a generator. This lot is isolated and the impacts of the tower would be minimal. This 110' tower would allow them to use a monopine type tower, which would make the tower look like a pine tree. They did a balloon test as part of the Planning Board process and found the visual impacts to be minimal. Traffic impacts are very low, and the site might go months without any traffic. The town ordinance makes it clear that they should use existing towers as much as possible; they have exhausted the existing structures they can use to fill in their coverage gaps. Three issues came up during the Planning Board process. The first was the need to build a new tower. Town staff and the Planning Board asked them to review a potential new tower behind Town Hall, as well as the tower at Public Works. They reviewed those sites and determined that placing an antenna on both of those towers would not meet their coverage goals. The second issue was concern about the loss of recreation use on this parcel. The Board suggested buffering to minimize impact, and also considered setting aside some open space. They felt that buffering would be accomplished by existing vegetation. He thought there was some conservation land near this parcel; the tower will not impact any conservation land. The third issue is the Spectrum Act; regulation of cell towers is 80% local and 20% federal. In 2012, the Spectrum Act was passed allowing additional antennas to be placed on existing towers with expedited local review, possibly just a building permit. This might have implication for the future of this tower.

Councilor Kitchel said other carriers can place antennas on this tower. Mr. Anderson said that is correct; this will be a Verizon tower, but under FCC rules they are obligated to make the tower available to any other carriers that want to co-locate on it.

Chip Fredette, representing Verizon Wireless, pointed out that last year Verizon placed antennas on the tower on Route 1 under the Spectrum Act.

Mr. Poore said staff will review with the Town Attorney what kind of standards they can impose on the conditional rezone that would address additional antennas despite the Spectrum Act.

Councilor Farber asked if they could consider future potential antennas when they consider mitigation of the equipment. Ms. Stearns said that's the question they need to address with the attorney.

Mr. Anderson said they can't predict whether another antenna would be placed on this tower or not. It is a question of whether they can condition something today on something that may happen in the future.

Councilor Farber asked for clarification on where the driveway comes out. Mr. Anderson said pages c-1, c-2, and c-3 of the plan set include driveway detail. It is a 12-foot wide gravel driveway.

Councilor Svedlow asked how many acres of impervious surface they are creating. Mr. Anderson didn't know, but thought they would be under the acre trigger for DEP review of stormwater.

Councilor Farber didn't like the location of the driveway; it is a bad curve. She asked if they lease the land. Mr. Anderson said they lease a 100x100 foot section, where the tower is located, and they have an easement for the access drive.

Ms. Stearns asked if they have a fall-zone easement; Mr. Anderson said no. A law court case in 2008 looked at whether the lines created by the lease area created a lot line subject to setbacks and whether the fall zone applied. The court found that those do not create property lines and the fall zone only applies when it extends onto an abutting lot. The lease implies that the property owner is okay with the tower being located there with the fall zone around it.

Chair Hemphill asked about the Planning Board's discussion around acquiring additional land for buffering; Mr. Anderson said they discussed managing the existing vegetation to buffer views of the tower. They feel that, given the distance of the tower site from abutting properties the vegetation in the immediate area isn't buffering the tower.

Chair Hemphill asked if the assumption is that nothing else will ever go on the property; Mr. Anderson said the amount of wetlands and vernal pools made siting the driveway difficult and it would make developing the property difficult. If the owners wanted to develop the lot, they wouldn't place a 110-foot-tall cell phone tower in the center of it. He felt this tower probably represents the highest and best use of this lot. Sheet c-6 shows the resource protection zone, which takes much of the lot out of development.

Councilor Farber thought there were some federal communication rules that they have to follow in this process; Ms. Stearns said those are addressed under the ordinance.

Councilor Farber wondered if there was any way to ask for them to mitigate any wetlands impacts. Councilor Svedlow didn't think they were going to impact wetlands that would trigger any compensatory mitigation. Mr. Anderson said there are some FCC federal regulations that prohibit the Council from denying it due to health concerns. There is language in the ordinance that any conditions imposed have to be related to the physical impacts of the installation. The town attorney should weigh in on what kind of conditions they can impose.

The public hearing was scheduled for Wednesday, October 11.

Adjourn

Councilor Kitchel moved to adjourn; Councilor Svedlow seconded. Motion carried 7-0.

Meeting adjourned at 10:44 pm.

Respectfully submitted,
Melissa Tryon
Recording Secretary