

Town Council Meeting Minutes September 25, 2017

The meeting was called to order at 6:00 pm.

Roll Call

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

Councilor Ferrante was absent.

Item 1 Order to go into 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 Kitchel moved to enter executive session; Councilor King seconded. Motion carried 6-0.

The Council entered executive session at 6:03 pm and returned at 7:03 pm.

Pledge of Allegiance

Chair Hemphill led those present in the Pledge of Allegiance.

Item 2 Public Forum

Chair Hemphill opened public forum.

Steve Hundley of Brookfield Road spoke about the Tuscan Way subdivision. He was opposed to it when he first heard of it, due to the 32 homes proposed for a 2.8-acre parcel. He and other members of the public have written letters to oppose the development, but no one has listened. He has been a soil scientist for 40 years and worked with septic designers and installers. He has never seen a septic plan so egregious as the cluster system proposed for this development. He said 7000 gallons of effluent will be discharged into the soil every day. These are sandy soils with a high water table and an escarpment 25 feet away with ground water seeping out at the base. The Falmouth ordinance for septic is very clear, has no ambiguity, and would prevent a system failure. At the last Planning Board meeting the developers came in with last minute documents, skewed the language of the ordinance so that it is meaningless and has no protections, and the Board granted preliminary approval. He wondered why they write an ordinance that isn't going to be followed. Last February there was a proposal for 6 homes on 1.5 acres and the Board denied preliminary approval because it didn't meet the character of the neighborhood. Tuscan Way is more densely designed than that development, and the Board has said they have no control over it. He said the Town doesn't care about what the neighbors think, about protecting the environment or about the subdivision ordinance.

Fred Chase of Stagecoach Road reviewed the most recent zoning map. He was astonished to discover that the Town has rezoned all the subdivisions he has developed over the years as RD, which is less restrictive than the zoning they were under when he developed them. That area doesn't generally have public water or sewer. The lots need to be large to accommodate wells and septic. There will not be a lot of infill development there. He supported duplex houses. He said they can't rezone Brookside Forest; people built expensive houses there because they felt they were protected by the zoning. When he built that development, he set his development back 100 feet instead of 75 feet to protect Meader Brook, and he gave the Town acres of land along the water. There are wild trout still in Meader Brook. He said the soils are absolutely terrible in

this area. You can locate a well, a septic and a leach field on one acre, but not less than that. He said adding infill will overwhelm the area. He said if they don't change RD, he will take the Town to court to defend his legacy of development over the last 54 years.

Whitney Bradford of Brookfield Road had a letter from someone that lived at Falmouth on the Green, which had a cluster septic system. 20 years after it was installed, the system failed and it cost the people who lived there a lot of money. She wondered what the people who live in these proposed condos at Tuscan Way will do in 20 years; she didn't think they would have the money to get out and the Town will never bring sewer to this area. She supported a moratorium on this type of development, and that it be made retroactive.

Jeff Amos, engineer with Terradyn Consultants, spoke about the Tuscan Way development. He said the Falmouth Planning Board process is rigorous and detailed. CCSWCD was brought in to review the storm water and septic designs; they have received their outside agency permits and CCSWCD has signed off on the designs. The Board and staff have said that the development has complied with all the Town's ordinances. The septic ordinance is very restrictive and very good. In a cluster development, each septic system must have a fully designed and sized backup system; if any system were to fail, it would switch over to the backup. There are safeguards in place to protect future homeowners. He said the development has been in the Planning Board process for 9 months and the developer has spent a small fortune to get to this point. He asked the Council to not make any changes retroactive; it would be unfair to the developer.

Chair Hemphill closed public forum.

**Item 3 Order to approve the minutes of the August 14, 2017, Town Council
(Consent Agenda) Special Meeting.**

**Order to approve the minutes of the August 28, 2017, Town Council
Meeting.**

Councilor Svedlow moved the agenda; Councilor King seconded.

Councilor Farber and Chair Hemphill made several amendments to the minutes.

Chair Hemphill opened public comment; no public comment.

Amended minutes carried 6-0.

**Item 4 Report from Council Committees and liaisons regarding updates on
assignments.**

Chair Hemphill announced the ecomaine annual open house this Saturday, September 30 from 8am-11am. Free food, tours, e-waste collection, crafts, demos and compost bins will be available, and a number of partners will be there.

Councilor Farber said CDC has been working on ordinance language regarding temporary signs; they are also going to start looking at Route 100 items. They will meet this Thursday at 7 am.

Councilor King said REAC held a joint event with the Town of Cumberland to build window inserts; they built a couple hundred window inserts over the course of the weekend. LPAC is working on an update to the 2006 Greening of Falmouth; they are going to publish a survey for the public later this month. The Tercentennial Committee is getting ready for the kickoff on the 300th anniversary on December 1. They are still looking for some sponsors and volunteers. More information is available on their website and they have a Facebook page.

Item 5 Report from the Appointments Committee relative to filling various vacancies on Boards and Committees.

Councilor Svedlow moved to reappoint Alison Bishop to the Library Board of Trustees to a term of 3 years beginning 10/1/17. Councilor King seconded.

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

Motion carried 6-0.

Item 6 Introduction to adopt the maximum levels of income and expenses for the General Assistance program, Chapter 6, Article 6, Section 6.68, Appendices A-D of the Falmouth Town Ordinance.

Town Manager Nathan Poore explained that the State updates the GA maximums for overall income and expenses every year. Every community adopts this; while the law provides municipalities the opportunity to establish their own, it is quite a process. This must be established by ordinance instead of by order.

A public hearing was scheduled for October 23, 2017.

Item 7 Order to authorize the Town Manager to execute a quit claim deed for Map U16, Lot 001 Block 00G.

Mr. Poore said this is for a settlement of past due sewer fees.

Councilor Farber moved the order; Councilor King seconded.

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

Motion carried 6-0.

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.

Item 9 Introduction of amendments to the Zoning and Site Plan Review Ordinance Sec. 19-23.11 Master Development Plan Time Limits, in order to extend the Tidewater Master Development Plan an additional one year.

Chair Hemphill reported that the Town continues to work with Tidewater LLC on an update to their master plan. There are several factors on each side that prevented the plan from being implemented this year.

Councilor Farber asked for a summary of what has been accomplished and what remains to be done.

Ms. Stearns said there are a lot of documents that govern this property. The Falmouth Land Trust has expressed interest in taking over management of the open space. The last submittal from Tidewater LLC had a different treatment for the barn property than what has most recently been reported. Staff have delivered their final review and are waiting for more information from the developer. Land use requires all the details to be in place, and they are not there yet.

Councilor Farber said this would extend the master plan and prohibit the submittal of a site plan for the last two undeveloped parcels. Ms. Stearns agreed and said the developer proposed changes to those last two parcels.

Councilor Kitchel asked if there was a previous agreement for the historic site. Ms. Stearns said there is language on the master plan regarding the uses of the site. The conservation easement, which only governs the open space parcel, mentions the Finks Farm historic buildings and suggests uses for them. This isn't binding since that parcel doesn't include those buildings, and both the developer and the Town agree on that.

Councilor Kitchel asked if there is an end date to this or is this open ended. Ms. Stearns said the developer can request changes to the master plan at any time. She said these extensions are necessary because there is a reversion clause in the master plan; if it expires the property would revert to its original zoning, which is RB. Neither the developer nor staff feel there is value in the property reverting. One of the items they are working toward is removing the reversion clause. The development is mostly built out.

Councilor Farber said the Council that passed the original extension realized there was some ambiguities in the master plan and how it addresses the property and this was their opportunity to address those. It is in the Town's best interest to get treatment of the home and barn cleared up.

Ms. Stearns said this process gives the Council the opportunity to work with the developer and tighten up the allowed uses for the original farm site. Mr. Poore agreed and said there is no risk or harm for the Town in extending this.

A public hearing was scheduled for October 23.

Item 10 Order to authorize the Town Manager to enter into an Easement Agreement, accept on behalf of the Town a Trail Easement, and execute and deliver on behalf of the Town an Easement and Road Maintenance Agreement related to street connectivity over Town property near Brookfield Road.

Adrienne Fine, of Terradyn Consultants, presented the request. This is a 32-unit condo development of 16 buildings along Tuscan Way, which will connect from Brookfield Road to Blackstrap Road. The development is contained in the northern portion of the parcel, leaving the southern portion as open space for buffering and trail development. LMAC has requested a public trail easement across the proposed trail, which will connect to 17 acres of town-owned open space. The trail will be maintained by the Tuscan Way Homeowners Association. The second request is for an easement and road maintenance agreement over the 50-foot wide Town right of way, to connect Tuscan Way to Brookfield Road and make it a through street to Blackstrap. They have received positive feedback on the street connection from Fire and EMS and Portland Water District is in favor of a looped water connection from Blackstrap to Brookfield under Tuscan Way. The Planning Board requested a peer review of the traffic study from TY Lin, who reported that the connection will not create unsafe conditions.

Councilor Farber asked how the Town ensures that the trail is created and maintained by the developer.

Ms. Stearns said the Planning Board has the authority and obligation to require a performance guarantee. LMAC has recommended to the Board that LMAC be engaged in the final locating and flagging of the trail prior to final approval, so the location can be surveyed and placed on the plan prior to approval. They would also be involved in the final construction specifications of the trail. The trail would be ensured by the performance guarantee, which also guarantees road construction and other site improvements. She agreed that the Board failed to include trail construction in the guarantee in the past, but that has been tightened up in the last ten years.

Councilor Farber asked what would happen if the Council did not approve the street easement. Ms. Stearns said the developer would not have the right, title and interest to build the street beyond their property line and so would not be able to construct a through street.

Councilor Farber asked if the proposed easement would permit public access across the whole street. Mr. Poore said it would not.

Ms. Stearns said the public trail easement would allow the public to access the trails from Brookfield, but only to use the private road up to the trailheads. This would be a private street with regards to vehicular traffic.

Councilor King thought the street easement was to create connectivity to satisfy the policy. She asked if the proposed street would be a public street. Ms. Stearns said it would not. Mr. Poore said the developer is creating a private road with interconnection with the public roads. Brookfield Road is public.

Ms. Stearns said they could grant the public the right to use the private road. Ms. Fine felt the developer would be willing to grant a public easement to provide access over the private road.

Councilor Svedlow pointed out that the Town will not have to maintain or plow the road; Ms. Stearns said that was correct, until such time as they petitioned the Council to accept the street.

Councilor King asked if the connectivity would be maintained in the winter and the development would have to plow the whole thing. Ms. Stearns said that is correct.

Councilor Kitchel asked about the traffic study and what impact the traffic will have on Brookside. Ms. Fine said the traffic study found that about 20-35% of traffic from this development would use the Brookfield Road access, and the remainder would come out on Blackstrap. This came to 6 peak hour trips on Brookfield. That means that, during a high-volume time such as 8am, there would be 6 trips going to Brookfield.

Chair Hemphill opened a public comment period.

Fred Chase of Stagecoach Road said this is the worst development proposal he has seen in 50 years. He said the access on Blackstrap will be a death trap. There is no one on Brookfield that objects to this piece being developed. There are 2000-3000 yards of stumps on this land; they may have to excavate because the fill is 40-50 feet deep. The Brookside HOA decided to give the right of way on Brookfield to the Town because otherwise the Town would not accept the road. When the homeowners asked him how many homes could be built on this abutting property, under conservation zoning the answer was 3-4. Brookfield complied with the RCZOD and he gave the Town waterfront acreage as part of the development. He didn't build more houses in his development because it is all fill. If the developer were reasonable and reduced the numbers to 14 single family units, which is what their sales agreement says they need to get, he wondered why they are asking for 32 condos. He didn't feel the Town had the right to rezone this area. He pointed out that any modifications to an approved plan have to be resubmitted to the Planning Board; he argued that the Town can't rezone over a duly approved plan by the Planning Board. He intended to pursue this legally.

Whitney Bradford of Brookfield Road didn't agree that this should be allowed to connect to Brookfield Road. Brookfield is a minor local road, which is only supposed to serve 9 homes and 99 trips per day. It currently serves 12 homes. This proposal would bring it up to serving 44 homes. Brookfield Road does not have sidewalks, is narrow, unpainted, and has a crest at Kimberly Lane. They have all had near misses at that crest. She was concerned with pedestrians. She didn't think they can predict what people will do once the homes are built; she argued that no one is going to turn left onto Blackstrap if they want to access the turnpike. She asked the Council to deny this request.

Steve Hundley of Brookfield Road said the traffic study didn't use common sense; there are 32 homes and he felt it was safe to assume that meant 64 vehicles going to work every day. He said there was already a perfectly good connection to Blackstrap but they are taking a different approach on a steep slope which will create an environmental nightmare, in order to accommodate a s-shaped curve that allows them to cram in as many condos as possible.

Public comment period closed.

Ms. Fine said, with regard to fill, they had geotechnical soil studies done of the right of way area and determined that it was acceptable to build a road on that location. The road was located based on the process laid out by the Town. It is cutting through steep slopes to access the site in order to create a better connection to Blackstrap with the best sightlines. Town staff made a statement that acceptance of the right of way was partially to provide for future street connectivity.

Councilor Farber asked about the minor local road designation; Ms. Stearns said the ordinance creates 4 classifications for streets, which is a combination of the number of homes and the anticipated traffic it will serve. It is a planning tool for the Board to use in reviewing street design and impacts. The Board can classify a street any manner they choose. There is no regulatory purpose for those classifications.

Councilor Farber agreed that the left turn onto Blackstrap may be difficult during certain times of day. She wondered about the impact of the development and whether it will increase the costs of maintenance for Brookfield over the long-term or whether the town will need to do any structural upgrades to address capacity issues. Mr. Poore said there is no concern with regards to structural issues; it is the weight of the vehicles more than the amount of traffic that would create structural concerns.

In response to Councilor Farber, Mr. Poore said staff have indicated that this is required for the plan to receive final approval.

Councilor Svedlow asked if there is a viable alternative, a dead-end for example. Mr. Poore said the Board could perhaps approve a waiver, but it has been a long-standing policy of the Town to encourage connectivity.

Ms. Fine said the developer originally proposed this as a dead-end street, but in the design process with staff and in consideration of the connectivity policy, this design was encouraged. Public Safety also strongly encouraged connectivity.

Ms. Stearns said staff use the policy statements on connectivity and incorporate it in their guidance to developers in the design process.

Chair Hemphill asked about the interface between the private road and the public street with regards to the maintenance and plowing.

Ms. Stearns said Brookfield is a public street. If Tuscan Way is approved in this configuration it will be private from Blackstrap to Brookfield but part of the private street will be laid over the public right of way. The Council has done this in the past. This would be treated like any other intersection between a private and public street; the Town will plow around the cul-de-sac, but will not plow Tuscan. The trail easement is set up like others, where the Town has the right but not the obligation to maintain the trail. Any public easement over Tuscan Way could be drafted the same way.

The Council discussed how to proceed. Ms. Stearns said the Council could consider the acceptance of the trail easement and the granting of the road easement and then consider the public easement over the private portion of Tuscan Way at a later date, or ask the developer to return with all three documents at a later date and consider them together.

Councilor Svedlow asked if they could make the addition of the public easement language to this easement a condition of their approval; Mr. Poore felt they should bring the request for the public easement to both parties and bring all the documents back to the Council at a future meeting as one package.

Amy T'chao, Town Attorney, agreed with Mr. Poore's suggestion.

Chair Hemphill summarized the request for the applicant to return with a public easement across the length of Tuscan Way, allowing for public use of the road and its connection to Blackstrap. Mr. Poore said they could place a condition on the order that this third element be brought back to the Council at a later date.

Councilor Svedlow moved the order, with the condition that the applicant return to the Council with a public easement agreement for the proposed Tuscan Way, to be evaluated and approved by the Council at the October 11 meeting. Councilor Farber seconded.

The Council discussed whether to discuss that easement separately, or to address all the easements as a package. If the public easement was denied, they questioned whether that would negate the action taken at this meeting.

Councilor Farber withdrew her second. Councilor Svedlow withdrew his motion.

The Council requested that this item, along with the requested public easement, be placed on the October 11 Council agenda.

Adjourn

Councilor Svedlow moved to adjourn; Councilor Farber seconded. Motion carried 6-0.

The meeting adjourned at 9:42 pm.

Respectfully submitted,
Melissa Tryon
Recording Secretary