

# **Town Council Meeting**

## **Minutes**

### **October 11, 2017**

The meeting was called to order at 7:02pm.

#### **Roll Call**

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

Councilor Farber was absent.

#### **Item 1      Public hearing on a conditional rezoning for the construction of a Tier III Personal Wireless Facility on Falmouth Road, Map-Lot R04-022.**

Chair Hemphill opened the public hearing.

Scott Anderson, representing the applicant, explained they are proposing to build a new 110-foot-tall tower on Falmouth Road. This tower will have minor impacts on the surrounding area, due to the size and location of the parcel. They can do either a pole or monopine design. There are significant coverage issues in this area; they reviewed several location options in the area to address these issues, and this is the best location. Their engineers, and the Town's peer review engineer, agree that this location best addresses the coverage issues. This is a good site, no one will see it or know it is there, and it will improve cell service in Falmouth.

John Adelman of Falmouth Road said this is one of the largest, unfragmented lots of open space in town. He urged the Council to meet with the owner about this parcel; the proposed access road cuts through wetlands and vernal pools. He wondered why this rezoning application is coming from the tenant and not the property owner. He didn't understand why there was no other better location for this tower, on the spur for example.

Chair Hemphill closed the public hearing.

Councilor Kitchel asked if they considered other sites for the tower; Mr. Anderson said yes, in the RF packet it shows the coverage gaps and the search ring to address it. They then go out to locate possible locations within that search ring. They look first for existing structures; church steeples, water towers, etc. They looked at the towers at Town Hall and Public Works; the engineers determined that those locations would not work and the Town's peer reviewer agreed. The proposed new tower will do a better job than either the Town Hall or Public Works sites, even if they made those existing towers taller. They are always looking for ways to avoid building a new tower, and the Town's ordinance mandates that as well.

Councilor Kitchel asked about the signal reach from this tower. Mr. Anderson showed a map that detailed the anticipated improvements in coverage as a result of this tower.

Councilor Kitchel asked about the anticipated traffic to the tower once it is installed. Mr. Anderson said it is once a month, on average.

Councilor Kitchel asked if the road would be accessible to everyone; Mr. Anderson said no, there would be a locked gate. Verizon staff, the property owner, and Public Safety would have access.

Councilor King said the land would be privately owned; they will lease the 100x100 foot square of land under the tower and maintenance buildings. Mr. Anderson said that was correct; they would also have an access easement. Both those agreements would be with the property owner.

Councilor King asked how a tower would be decommissioned if it were damaged or abandoned. She also wondered who would control the access onto Falmouth Road. Mr. Anderson said typically there is a condition in the site plan approval that if a tower isn't used in a set period of time, such as a year, that it is

required to be removed. It is also typical that they post a bond with the Town so that, if the company didn't remove it as required, the Town could pay to have it removed. He stated that they are required under FCC rules to make the tower available to other carriers, and the Town requires new carriers to look for towers to locate on before they build a new one. This process will not provide any authority to allow a co-locator on the tower; that would be subject to another round of permitting by the Town. The property owner has control of the current wood road; they would build the road as shown according to their lease and there would be only one curb cut on Falmouth Road. This proposal would not allow any further development on the lot.

Chair Hemphill asked about the sight lines at the location of the curb cut and whether they met the standards for visibility. Mr. Anderson said they would research that.

Chair Hemphill said there are lots of vernal pools and wetlands on the parcel and the proposed gravel road will cross some of them and/or their buffers. Mr. Anderson said there are detailed breakdowns of vernal pools in the packets. There are some wet areas and vernal pools and the access drive is designed to avoid wetland impacts. They only need two DEP approvals; one for a wetland crossing that was a permit-by-rule and the other was a stormwater permit-by-rule. Both of those have been approved. They didn't need any Army Corps approvals.

Chair Hemphill asked about town antennas on the tower; Mr. Anderson said there is unlikely to be any interference with their signal and they are open to allowing town access.

Chair Hemphill asked about emergency access on the gravel drive in the case of an emergency; Mr. Anderson said they haven't done that. They thought it would be part of the Planning Board process. They design their roads to allow large trucks to access the site, and they will make sure fire trucks will be able to access it. They will make sure emergency services has a key to the locked gate.

Chair Hemphill asked if each carrier that might be located on the tower would have the same access needs; Mr. Anderson said that it correct. Each carrier uses different equipment and would have their own engineers to work on it. That might add up to 6 trips a month. He argued that a single-family home on this site would have more traffic impact than this tower, even if it was full.

Councilor King asked if they could ask for a peer review of the buffering of the vernal pools. Councilor Svedlow didn't think that was common. He asked who delineated the vernal pools. He argued that DEP has reviewed and approved it and he wondered what more they would need.

Chip Fredette of Verizon said DEP walked the site with them to review the wetlands.

Councilor Svedlow understood the concerns, but said they need cell coverage. He supported the tower.

Councilor King felt they have demonstrated the need and made a good effort to find another location. She felt it was unfortunate that it was close to conservation land.

Chair Hemphill agreed; they have looked carefully at alternative locations and the need for coverage mandates a tower someplace.

Amanda Stearns, Land Use Policy Specialist, said conditions and restrictions need to be drafted prior to the public hearings; if they reviewed the draft conditions on October 23 they could hold their hearing on November 13.

Councilor King asked if the conditions would include the Planning Board's suggestions for buffering. Ms. Stearns said the Board would be restricted to the permitting process once the Council approves the rezoning. If they want additional buffering beyond what the Board can require as part of their process they need to include that in the conditions. She said this is exempt from the general site review requirements. The Council's conditions and restrictions act like zoning requirements; they cannot be waived by the Board.

Councilor King asked about addressing future changes to the tower; the Spectrum Act may impact what they can and can't do with regards to modifications in the future.

Nathan Poore, Town Manager, said any restrictions they want to put on future modifications would have to be within their authority under the Act.

Ms. Stearns said if the Council places specific restrictions on this rezoning (tower of a certain height, with one antenna on it for example) they are allowed to do that under the rezoning and any future co-locator would have to apply for an expansion of this conditional rezoning and go through the process.

Mr. Anderson agreed and said all they are asking for is the tower with their antenna.

Chair Hemphill asked if the rezoning applies to the rest of the property or just on this 100-foot square location. Ms. Stearns said it would include any area on the lot that is required to be improved; it will include the 100x100 easement area, the gravel drive, and the minor stormwater improvements that need to be done as well. The rezoning will be limited to the exact use and the exact location of the improvements. The existing zoning will continue to exist under the rezoning.

The Council will review the proposed conditions and restrictions at their October 23 meeting.

## **Item 2           Public Hearing on the Homestead Acres, LLC Contract Zone Proposal.**

Chair Hemphill opened the public hearing.

Councilor Ferrante announced that she is recused from this item, since she owns property subject to the proposed contract zone.

Matt Ek of Sebago Technics, representing the applicant, discussed the work they have done to date in designing this project. They are proposing three parks within the development, one of which would be turned over to the town. He said this is located in a designated growth area of the town.

David Murdoch has lived in town for 50 years. He wondered why this contract zone was brought forward after the town referendum on Route 100 improvements. He felt his neighborhood would be destroyed by this cluster bomb of development. He said many people walk and bike along Mountain Road. The area has winding roads, ponds, and abundant wildlife. This explosion of homes will create another area like Route 1, with traffic and stop lights everywhere. He argued that they will need stop lights at Brook and Leighton roads if they add all these homes. He was concerned about the increase in loud vehicles and light pollution. This isn't a village; this is Portland north.

John Winslow of Gray Road was against the contract zone. He spoke about the concept work the town paid to have for this location. He wasn't aware of any impact studies done to predict the impacts of these high-density residential growth areas on schools, stormwater, etc. He was concerned about runoff to the river, and the noise impact of the highway once the vegetation is removed. He wondered whether they would bring the Metro to the development. He said this project has already impacted the Route 100 project; that project has been delayed a year. The VMU zone permits a variety of structures and uses; he felt that zoning allows development of a variety of uses with 10,000 sf with water and sewer. He urged the Council to deny the contract zone and to review the high-density residential zoning.

Steve Dyer of Mountain Road opposed the contract zone. He said the exemption from the 65-building permit cap would be huge; that hasn't been granted in the past. The schools are already overcrowded. This is going to be 150 new units; combined with the other new units being proposed in town, he felt the schools could not support that. There hasn't been a study to show that the schools could do this. He thought this would result in a \$2 million increase in the school budget. He said the traffic would be a nightmare. The Route 100 project has been delayed and now the traffic study has to be redone because it is out of date. He said that the developer is avoiding doing a traffic study because the development is phased; he thought that was wrong.

Scott Walker of Gray Road opposed the contract zone. He thought it was ridiculous to go down to a 55-foot lot width; the houses will be squeezed in next to each other. He said the traffic from this development would

be huge; pulling out onto Mountain Road would be a nightmare. The schools are crowded already and there is no more room for new schools. He thought the impact fees of \$1100/unit is low. He asked about the building codes for these homes. He wanted the playing field to be fair for all developers.

Andrea Ferrante of Greta Way owns a lot in the proposed development and said she has owned property on Gray Road for 10-15 years. She has always wanted to see a neighborhood there; the tenants in the buildings she owns have never walked on the back of the property and walking along Gray Road is dangerous. The Route 100 Committee and LPAC have both given the nod on this property to move forward. The rezoning of Route 100 has not moved forward yet so this property has not been addressed. Falmouth values open space and there are certain areas in town that are sacred. This development in this location is a win for Falmouth and the people who enjoy this area. She spoke highly of the two developers working on this project; they are local and have a mission. They have been nothing but cooperative. She said she has attended 12 different meetings on this project in the last year. With the walking trails, parks, and the support for the businesses that are already there as well as those to come, this is a great opportunity.

Lonnie Graver, a member of the development team, said if someone wants to move to Falmouth now and can borrow \$400,000, there are 6 options on the market. If that person can borrow \$300,000, there are 2 homes on the market. For less than \$300,000, there is only one. A first-time buyer looking to buy in Falmouth has no options. A current Falmouth resident looking to downsize has no options either. He spoke about the apartments he recently built in Cumberland; they have 96 units with only a handful of schoolchildren, and about 200 additional car registrations. This is a win for Falmouth.

Julie Porter of Mountain Road showed a historical picture of Falmouth and argued that the town has a historical village and this is it; she has been trying to get a designation from Washington for Piscataqua Corner village. She wanted to keep that village intact; it would be a shame to destroy it just so someone can profit.

Matthew Mehalic of Stone Ridge Road said there are 16 variations to town zoning that are included in the proposal. He argued that the rules have to be fair across the board; this seems like a large number of variations and all of them seem to be designed to increase density. He said this would have a negative impact on schools and traffic patterns. He calculated that the impact fees would come to \$133,900 which will not go far; it won't cover additional wings at the schools, or improvements to the road. He was concerned with the increase in traffic and the increase in coverage that would be necessary for emergency services. He hoped the Council listened to the citizens and opposed the contract zone.

Kevin Salvo of Fox Hall Road said their culvert recently failed and the 5 homes on the road had to invest \$100,000 into fixing the culvert. The sewer line that serves his road and the bank would also serve this development and it is only an 8-inch line. He was opposed to the contract zone. He was concerned with the impact of increased stormwater on his road.

Keith Noyes of Gray Road said the development is 150 units on 50 acres. Falmouth is a beautiful town. He thought this proposal was wrong and he didn't support it.

Liz Hooper of Mountain Road was concerned about the adverse impact on traffic and schools. She opposed the contract zone.

David Chase, developer, said they would submit more information that would address many of the concerns raised tonight. The benefit of this project is the pre-planning; they will get a much better global development across several properties, instead of each parcel being developed separately without coordination. 4-5 properties are being developed as part of this proposal, and it takes into consideration others that are not part of it. Its best to think out and plan ahead; this won't happen overnight. It would be limited to 36 houses per year, and it is a 3 to 4-year project. He felt this would be a great subdivision and would allow people who want to stay in town to live there as opposed to those from out of town. He said many of the people who spoke about loving this town moved here and live in a subdivision. He loves the town and doesn't want to ruin it. He argued that this project would provide some much-needed housing.

## Town Council Minutes

October 11, 2017

Page 5 of 8

Savas Gunduz of Kathys Way said this is about responsible development in town. He was opposed to the density in the proposed development and he echoed the comments that they needed a level playing field for developers.

Jonah Dewaters of Blackstrap Road reviews large-scale developments professionally. He wondered about a traffic study, wetland delineations, and a site plan that shows what would be allowed under current zoning. He wanted to make sure that there is a process to allow for an informed decision.

Todd Kelley of Sulky Way opposed the development. He said this would ruin the town. He argued that they should develop according to the zoning. He was worried about other large parcels in town and what would happen if those were developed with the same density. The schools are maxed out already. He wanted to see a plan that shows what they could do on the site under the current zoning.

Chair Hemphill closed public comment.

Mr. Poore said that staff have discussed a deadline of October 25 for the applicant to submit further materials prior to their placement on the Council's November 13 agenda. This would allow enough time for staff to review the materials.

Chair Hemphill asked about the traffic study; Mr. Ek said a traffic study was submitted yesterday. It was ready but they were waiting for additional information. Their attorney has reviewed the land use ordinance to make sure that they have captured all their requests for the contract zone. Wetland and vernal pool studies have all been done; steep slopes and topography are all included on the plans. The school is still working on an enrollment projection report, and they can address potential school impacts once they receive that report.

Chair Hemphill supported a peer review of the traffic study. The Council agreed.

Chair Hemphill said there has been some interest in what conventional development would look like on the site and asked if they have done a design of that. Mr. Ek said they haven't done that, but they could. He said it would not be an aesthetically pleasing neighborhood. Chair Hemphill asked for that to be done.

Chair Hemphill asked about the architectural styles of the proposed housing; Mr. Ek said they don't have those yet, but he can get them. They have styles for the multi-unit buildings.

Councilor Jones asked about building a bus stop or working with Metro to bring public transit to this development and mitigate some of the traffic concerns. Mr. Poore said they can extend bus service; the funding formulas are based on bus miles. If they extend it, it would add additional expense to the town's local share. He felt it would be advisable to build bus stops or shelters, even if it was for future bus service.

Councilor King thought Metro would decide that. Mr. Poore agreed it is under the control of the Metro Board, but he has never seen them say no to a request for extension of service. It would take time to evaluate and come up with the best options.

Chair Hemphill asked when the most recent submittals would be available; Mr. Poore said they would be attached to the Council's agenda item tomorrow.

Councilor Svedlow asked about the history of contract zoning for this lot. Mr. Poore said this began with a conceptual master plan for the area a year ago with discussions with the developer and the CDC. The developer could wait for the Council to rezone the area in keeping with the suggested zoning amendments, or could move forward with a contract zone. Since the permanent Route 100 zoning was likely to take some time, the developer chose to move forward with the contract zoning process.

Councilor Svedlow supported the suggested deadline for materials to be submitted. He felt this process was voluntary on the part of the developer. He asked what the next step would be.

Ms. Stearns said the process requires a contract zone agreement to be finalized and executed by the developer and the Town. The developer submitted a draft agreement but it does not include any conditions or restrictions from the Council. A draft agreement must be created and made available for the Planning Board's

MRA hearing. The Council's public hearing must be held after the Board's MRA hearing. The Council should discuss what conditions and restrictions they may want included in the draft agreement, including any specific requirements or requests, such as the architectural renderings, street design, parks; anything they want to control outside of the Planning Board permitting process. Some of the issues raised that the Council might consider include village character of the area, protection of wildlife habitat, wetlands and vernal pools, light pollution, growth caps, quality of stormwater improvements and impact on water quality.

The Council discussed the process moving forward. Once the applicant submits additional materials, staff will review them and draft a report for the Council to review at a workshop session. Another public hearing will be held at a later date.

Councilor Kitchel said the CDC has held 10 meetings on this contract zone. The contract zone gives the Council some leverage; if the developer wanted to go through the normal subdivision process with the Planning Board, the Council would not be involved. This contract zone lets the Council weigh in on the project; they can waive some rules for the developer but also get something back in order to create a great neighborhood. He was most concerned with the impacts of traffic and schools. The density seems high, but it also means that the homes would cost less; they will be more affordable than a typical new home in Falmouth. They have asked for 36 homes to be less than \$330,000 as part of the contract. This has been a contentious issue and he has received a lot of comments about it.

Chair Hemphill said the Council and applicant have worked hard on a process that is fair to the Town's goals; this is a growth area and they have advocated for smart growth where there is sewer, water and the opportunity for public transit. They wanted nice, well built homes by a responsible developer. They will pace this over of a number of years and it will be responsive to the growth cap. While there are exceptions granted to this development, they will apply for permits the same way as any other developer. There has been a lot of respect afforded to the Town and its interests as part of the project. He was confident that the issues of traffic and school impacts can be addressed.

The Council took a short recess.

**Item 3            Order authorizing up to \$18,850,000 of the Town's General Obligation Bonds to refinance and refund a portion of the Town's outstanding 2011 General Obligation Bonds.**

Mr. Poore said this would refinance the bonds at a lower interest rate. It will save the Town and the State money in interest. This is great work on the part of the Town's bond agent.

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

Councilor King moved the order; Councilor Svedlow seconded. Motion carried 6-0.

**Item 4            Discussion about Highland Lake water quality and current efforts to develop strategies to improve water quality.**

Mr. Poore said Highland Lake's water quality was a success in the mid-2000's due to the work of residents in the area as well as the towns, Cumberland County Soil and Water Conservation District (CCSWCD) and Maine DEP. Since then, there has been less emphasis on implementing the plans. A few years ago, the lake started to see an algae bloom of an organism that is typical of marine areas. The Highland Lake Association (HLA) made the Town aware of the problem this summer. The towns met with HLA volunteers and created strategies to inventory what is happening in the area with regards to septic and development, review ordinances to see what is allowed, and review the implementation of the plans. CCSWCD will help with some of the efforts, along with the volunteers and the Town of Windham. Additionally, they need to determine what the algae is; no other lake in the state has this type of bacteria. Staff recommends an order from the

Council that would support the creation of the stakeholder group and appoint two representatives from Falmouth.

The Council supported the proposed plan.

**Item 5            Order to authorize the Town Manager to enter into an Easement Agreement and to take all other actions necessary to accept on behalf of the Town certain rights and easements relating to public use of trails and Tuscan Way, and to execute and deliver on behalf of the Town an Easement and Road Maintenance Agreement relating to street connectivity over the Town's property adjacent to Brookfield Road.**

Adrienne Fine of Terradyn Consultants, representing the applicant, said they discussed the easements for public access for the trail and an easement over the Town's right of way at the Council's September 25 meeting. At that time, the Council requested a public easement across Tuscan Way. All three of those easements are now included in the packet. She summarized the project; the proposed street is 25 feet wide, has been designed to local street standards and has been reviewed by the Planning Board. She described the location of the public trails. The easement over the Town's 50 foot right of way will allow the street to connect from Brookfield Road to Blackstrap in keeping with the Town's street connectivity policy.

Chair Hemphill opened a public comment period.

Whitney Bradford of Brookfield Road felt that there are a lot of items with this development. If the Council approves this easement now, they are taking away from all the other items of contention. She wondered why they have to decide this right now since the development may not move forward. The developer needs this approved before they go to final approval. She felt this should be tabled until they have a better understanding of what this development will look like. If the density of the development is changed, the connectivity issues will go away. They don't mind connecting to a smaller development of single-family or duplex homes.

Chair Hemphill closed the public comment period.

Councilor Kitchel asked if the Town would incur cost with this easement process; Mr. Poore said no.

Councilor King felt the connectivity piece can stand alone. If there is a change in the situation, the agreement can be amended. She asked whether this agreement is connected to a specific map. She thought this agreement is independent of changes to the roadway.

Mr. Poore said the language is tied to the Planning Board approval; if there are any material changes, the Council has an opportunity to make changes or renegotiate the deal. It is doubtful, given the layout of the land, that the road design would change. The Town's attorney wrote this language to preserve that option.

Councilor Ferrante asked if interconnectivity is always considered a good thing; she didn't think it was. She asked if there are times when connectivity is not optimal.

Chair Hemphill felt it was a policy of the Council to follow the interconnectivity policy, and this project seems well suited to it. There are positives to connectivity including plowing, public safety.

Mr. Poore felt this was a text book example of the benefits of connectivity. He thought there might be examples of where connectivity is not a benefit.

Councilor King said part of the development of Brookfield speaks to this connection; that development conceived this connection initially.

Ms. Bradford agreed that Brookfield became finished and became a public street. She said the zone at the time allowed for only 5-10 homes to be developed on this lot. If they knew then what they know now, they would have kept Brookfield private.

Councilor Svedlow said Brookfield is a public street and there are benefits to the Town in having this connectivity. It fits the Town's guidelines.

Councilor Svedlow moved the order; Councilor Jones seconded. Motion carried 6-0.

**Item 6            Discussion of process for Council to address zoning policy options related to the Resource Conservation Overlay Zoning District and other matters related to density in residential districts.**

Mr. Poore said the Council has indicated a desire to discuss the impacts of the 2016 zoning amendment that impacted residential density with two-family and multi-family dwellings. He recommended that the Council ask staff to review the public comments made to date and draft options for the full Council to consider.

Councilor King was concerned about the timeframe; she would like to know how long that would take and when they would hear a report from staff.

Chair Hemphill felt this was the most efficient way to address this.

Councilor Ferrante wasn't convinced that what was expressed at the Council meetings and to staff is all that needs to be heard in this process. Mr. Poore said staff has indicated that it would be important for Councilors to tell staff what they have heard as well as what they think.

Councilor King asked about the scope of this review and whether it would be limited to the two-family/multi-family development issue; Mr. Poore said yes it would.

The Council agreed with the proposal.

**Item 7            Introduction of an ordinance to establish a new moratorium on retail marijuana establishments and retail marijuana social clubs.**

Councilor Jones explained that the current moratorium has expired. Instead of extending the current one, the Maine Municipal Authority has issued new recommended moratorium language and suggested that towns adopt it. This proposed moratorium would be retroactive to today's date.

A public hearing was scheduled for November 13.

**Item 8            Order to go into Executive Session pursuant to the Laws of Maine to discuss and consider real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).**

Councilor King moved the order; Councilor Svedlow seconded. Motion carried 6-0.

The Council entered executive session at 10:03 pm and did not return.

Respectfully submitted,

Melissa Tryon  
Recording Secretary