

Town Council Special Meeting

Minutes

February 12, 2018

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

Roll Call

Councilors King, Councilor Farber, Councilor Kitchel, Chair Hemphill, and Councilor Ferrante were present and answering roll call.

Councilor Svedlow arrived late.

Councilor Jones was absent.

Item 1 Update from the Falmouth representatives to the Highland Lake Leadership Team (HLLT).

Nancy Lightbody of the Conservation Commission and the HLLT said there are more than 250 homes with frontage on the lake and more than 1000 homes in the watershed. About five years ago, a bloom of blue/green algae started on the lake in late July and early August. The HLLT was formed last fall to research the issue and improve and maintain the water quality of the lake. She spoke about the membership of the Team, which includes members from the towns of Windham and Falmouth, the Highland Lake Association (HLA), the CCSWCD and the DEP. The Team has formed several committees and subcommittees to address the tasks of ordinance review, a watershed survey, communicate with and educate the public, host a public forum, and conduct scientific research on the cause of the bacteria blooms. A public forum will be held on March 7, 2018 at 7:00 pm at Windham High School Auditorium.

Councilor Farber asked about the watershed survey.

Chantal Walker of the HLLT discussed the survey. A mailing will go out to property owners in the watershed, notifying them of the survey. Owners will have the opportunity to opt out of the survey. They will have 8 paid technical leaders to conduct training for the volunteers. The volunteers will then go to each sector of the watershed and survey properties for signs of erosion, road disrepair, and other items. The survey will take place in one day. The data will be compiled by CCSWD and the resulting report will both identify tasks that need to be done and rate them. The last survey was conducted 17 years ago. They will apply for grant money to help pay for any work and they will need people to volunteer the day of the survey. She said they have sporadically tested water outside the boundaries of the lake but it is expensive; they will do some of that this summer.

Item 2 Review of the Homestead Acres LLC and Turning Point Development LLC draft contract zone agreement.

Councilor Ferrante was recused from this item.

Matt Ek of Sebago Technics, representing the developers, said the attorneys for both the town and the developers have been working on the draft agreement and the exhibits.

Natalie Burns of Jensen Baird Gardner & Henry, representing the developers, said they issued a clean copy of the current draft today. She summarized the items included in the agreement. The contract will be redrafted, but the requirements are not changing. The existing zoning of VMU will continue to govern this site outside of the specific changes that are included in the agreement. The dimensional requirements for residential lots would change to a 50-foot minimum lot width, 10-foot minimum front setback, 8-foot minimum side setback, and a reduction in the minimum net residential area per lot to 0. For the retail/commercial lots the minimum front setback would change to 0, and the maximum would change to 20. If these buildings contained a dwelling, these setbacks would still apply. The maximum building height would increase to 3 stories (45 feet). Dwellings that qualify as 55 or older housing would be exempt from the growth permit and the growth cap. A minimum of 32 single family dwellings would be entry level housing and a deed restriction would be required. The contract includes a list of permitted uses and changes to the subdivision requirements, primarily concerning street standards. The agreement would also reduce the wetland setbacks to 25 feet. The developer's obligations include the creation of a public park and two private passive recreation areas, construction of public trails and easements over them, assisting the town in acquiring a license agreement from the MTA for trail access to Marston Street, impact fees and wastewater connection fees, design standards that would prohibit two single-family units with the same design in a row and an allowance for solar installation, installing underground utilities, posting performance guarantees, and installation of landscaping and sidewalks. The developer has agreed to develop an invasive species eradication program, allow on-street parking in both the residential and commercial areas, provisions regarding when trails and public easements will be completed, and that the development will be served by public sewer and they will pursue natural gas for the development. As part of the agreement, the Town will agree to rezone the property as outlined in the agreement and to accept the wastewater from the development.

Councilor Kitchel asked about the width of the streets. Mr. Ek said the collector/sub-collector streets would be 24 feet, and the local streets would be 22 feet. The street from Rt. 100 to the roundabout would be wider to accommodate parallel parking on both sides of the street. These proposed widths are the minimum allowed as Town staff requested.

At Councilor Svedlow's request, Mr. Ek gave a brief history of the project to date.

Chair Hemphill asked about the publicly accessible parks. Mr. Ek said Park A will be a public park, built by the developer and given to the Town. The other two, B and C, will be for more passive recreation areas and will be maintained by the homeowners' association.

Councilor Farber pointed out that there is no language in the contract addressing those two parks.

Councilor Kitchel asked about the home designs. Mr. Ek said there are 7 designs in total; they vary by both square footage and exterior design. They want to have more than that, and they will limit it to no more than two of the same design in a row.

Chair Hemphill asked about bringing natural gas to the development.

Dave Chase, developer, said he has talked with Summit Natural Gas several times. They seemed eager to bring natural gas to the site but they don't want to bring the gas line down to the development too early in the process. They are talking about bring the line down Winn Road to this project, and then down Gray Road from there. Summit told him their goal was to install gas in Route 100 during the infrastructure project.

Councilor King asked about the 55+ housing. Mr. Chase said he was originally looking for a 50% general exemption from the growth cap but that went away when they removed the plan for the apartments. The 55+ and the entry level housing would be exempt. The entry level housing will be anywhere from 32-45 homes.

Councilor King asked about the impact of the 55+ housing. She was unsure about the language around the 55+ housing; she had the understanding that it would be tied to the ownership of the house, and not just a family with a member who is 55+. Mr. Chase agreed. Mr. Ek said it was drafted to allow for a couple who might only have one member that was 55+. He thought they could tighten up the language.

Town Manager Nathan Poore said the town currently exempts developments that are 80% 55+ housing. For this development, since it is so large and will be phased, they wanted the flexibility for the 55+ and the entry level housing. He thought the concern was whether there was a cap on how many homes might be exempt as a result. Councilor King agreed.

Councilor Svedlow said the language in the contract needs to be amended; 55+ isn't in it. Ms. Burns said she would put the language back.

Land Policy Specialist Amanda Stearns clarified that the conditions as written do not include any limitation on either the entry level or the 55+ housing; if they marketed the development for those two types of housing, there would be no growth permits required. She pointed out that the development is under a phasing plan, which limits the development to a certain number of houses per year already. They cannot build out any faster than the phase plan allows.

Councilor Svedlow pointed out that they are incentivizing those two types of housing.

Councilor King was concerned how this development would impact the town in relation to other development in town.

Chair Hemphill pointed out that language that exempts entry-level housing from the growth cap is not included in the agreement. Ms. Burns said there is a minimum of 32 single family units for the development, and a maximum of 15 per phase, bringing the total maximum entry-level units to 45.

Ms. Stearns said staff requested that all zoning variations be placed in one exhibit and rate of growth is listed there.

Councilor Svedlow requested that this be included in the agreement and not just in an exhibit. Ms. Stearns said they had pulled all zoning variations into exhibit 4 and referenced in the contract to simplify the agreement. The Council requested that the rate of growth be included the agreement language.

Councilor Farber asked why leasing is called out. Ms. Burns said they could remove it. Ms. Stearns said there is no prohibition on condos for the duplex units, so they could both be sold separately.

Councilor Farber asked if the prohibition on accessory dwelling units is a permanent restriction; Ms. Stearns said it is, in order to keep those units smaller and at the entry level piece of the market. Ms. Burns didn't think it was intended to be permanent, since the entry-level status isn't intended to remain in perpetuity. Ms. Stearns said that was not the intention of the CDC at the beginning. Mr. Chase told the CDC that the development would not have accessory dwelling units because the lots are so small, they are not large enough to accommodate more than one dwelling per lot.

Councilor Farber asked if they need more detailed language on the trails, including locations, length, etc. Ms. Stearns said the plan is a concept plan; when the Planning Board reviews it the lots could increase. There is nothing that states how much of the development would remain as open space. Councilor Farber felt this was part of the public benefit portion, and it would be a mistake to not set a floor on that.

Councilor Farber asked about the connection to Marston St. Mr. Ek said the end of Marston St. meets the turnpike boundary. The MTA has agreed to grant a license agreement to the Town to allow a trail connection from the development to Marston. The fence blocking the turnpike would be moved to accommodate the trail.

Councilor Farber asked what would happen if the underlying zoning changes before the project is completed. Ms. Stearns said once the project receives substantive review from the Planning Board the zoning in effect at that time would continue and the project would be protected. Ms. Burns agreed and also said that once the project has its approval, the Town is blocked from changing the zoning in a way that prevents the project from being built.

Councilor Farber asked if there needs to be a definition for native trees. Ms. Stearns said the only landscaping in the right of way is likely to be grass and street trees. When the VC districts were created, it included a list of acceptable shade trees, which are all native. They could reference that list in the document, or leave it to the Planning Board.

Councilor Svedlow pointed out that the Conservation Commission monitors Planning Board applications and would review the landscaping plans for invasive species.

Councilor Farber asked if amendments to the agreement would be considered a zoning amendment and be subject to that process. Ms. Stearns said without any other language, it would be subject to the contract zoning provisions.

Councilor King asked about the traffic study and the school impact study. Mr. Poore said the school enrollment study has been delayed. There is some preliminary data but the report is not ready.

Councilor King said one of the suggestions from the CDC was to impose a fee to minimize the impact of the development. The fee included in the agreement is smaller than she expected. Ms. Stearns said the growth permit fee is \$1300/unit, and the developer has agreed to pay the fee whether a permit is required for the dwelling or not.

Councilor Farber asked why the building height was increased to 45 feet for the whole development. The limit for residential homes in the rest of town is 35 feet. She said this is not clear that it is for commercial only. Ms. Burns agreed and said that is not the intent; they would include a 35 -foot height restriction for residential homes.

Councilor Farber asked why the entry-level housing is specific to single-family housing instead of the two-family. Mr. Chase said there isn't any reason; the duplexes came in when the apartments were removed. He would like to see the duplexes included as entry-level.

Councilor Farber asked for staff to discuss the street standards. Ms. Stearns said some of the requirements were requested by the developers and some by staff. The town's current standards were drafted in 1983 and don't reflect modern design standards for smaller, quiet, narrower neighborhood streets.

Councilor Farber asked if the Planning Board has the authority to waive the wetland setback; Ms. Stearns wasn't sure about that specifically, but said this request is limited to the few lots where those setbacks would be reduced. Mr. Ek said it applies to three lots. Councilor Farber asked for those to be identified.

Councilor King said the goal was to have a diverse neighborhood; she was concerned that without a cap the development would become entirely 55+ development. Ms. Burns pointed out that 55+ is a classification under the Fair Housing Act and a limit or cap might violate the Act.

Mr. Chase agreed with Councilor King; he can't discriminate on who he sells to but he didn't have any intention of marketing this as a 55+ development. He said the design of the development will be for starter homes and young families.

The Council discussed the next steps. The process includes public hearings at both the Planning Board and the Council. The Council discussed whether to send this draft agreement to the Planning Board for their MRA hearing, to delay until a new draft including the Council's requested changes was reviewed by the Council, or to send a new version of the document that includes the discussion and requests presented tonight to public hearing. The Council asked the developer to incorporate the discussion in a new version of the agreement and sent it to the Planning Board for a MRA hearing. The Council scheduled a review of the document for their February 26 meeting and a public hearing for March 26. Councilor Farber suggested an additional public forum for March 12.

Councilor Farber asked about abutter notification; Ms. Stearns said statute requirements are for immediate abutters, each of whom would receive a copy of the conditions and restrictions. Councilor Farber requested an expanded notification across Rte. 100, Mountain Road and Marston Street for the public forum.

Chair Hemphill asked if there would be a widening of the turnpike in that area. Mr. Ek said his understanding was that the turnpike will expand to three lanes up to exit 50. That isn't in this area.

Item 3 Order to go into Executive Session pursuant to the Laws of Maine to discuss the following:

- **negotiation parameters associated with the Teamsters Local 340 and Maine Association of Police contract renewal, pursuant to 1 M.R.S.A. § 405 (6) (D).**
- **to discuss and consider the acquisition of real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).**

Councilor King moved the order; Councilor Svedlow seconded. Motion carried 5-0 (Ferrante absent).

The Council entered executive session at 9:01 pm and did not return.

Respectfully submitted,

Melissa Tryon
Recording Secretary