

Town Council Meeting Minutes February 26, 2018

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

Roll Call

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

Councilors Svedlow and Ferrante were absent.

Pledge of Allegiance

Chair Hemphill led those present in the Pledge of Allegiance.

Item 1 Public Forum

John Winslow of Gray Road said an unintentional effect of high-density zoning is the effect on the schools. There are two modular buildings at the school campus used for storage. The schools are at capacity and it is only going to get worse. He didn't believe the enrollment projection took any one development into account; it was based on past development and future projections. The effect is that there will be more kids in modular classrooms, which will affect the quality of education and the safety of the students.

Item 2 Consent Agenda

- **Order to approve the minutes of the January 8, 2018, Town Council Special Meeting.**
- **Order to approve the minutes of the January 22, 2018, Town Council Meeting.**

Councilor King made an amendment to the January 8 minutes.

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

Councilor Farber moved the consent agenda; Councilor King seconded. Motion carried 5-0.

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

Councilor Jones said on Wednesday, March 7 at Windham High School there will be a public forum on water quality at Highland Lake. On Saturday, March 10, from 9-12 at Portland Country Club the Lawns and Lobsters event will be held. This is a discussion about lawn care and how it can impact water quality. One of the speakers is an expert on lawn care without chemicals.

Chair Hemphill reported that ecomaine will award the eco-excellence awards on Tuesday, March 6, at 11am at ecomaine. Kimberly Darling and Jim Wellehan of Lamey-Wellehan will both receive awards.

Councilor King said the Tercentennial Committee had several successful events in February, with more coming in March. She said LPAC is drafting the update to the Greening of Falmouth and will bring it to the Council when it is ready.

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

Councilor King read the recommendations into the record.

- Long range Planning Advisory Committee – James Chaousis
- Long range Planning Advisory Committee – Rich Jordan, Planning Board Liaison
- Planning Board– David Sinnett, Alternate Member
- Planning Board– Peter Kenlan, Alternate Member

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

Councilor King moved the order; Councilor Farber seconded. Motion carried 5-0.

Item 5 Supplemental appropriation and transfer in the amount of \$140,000 from unassigned fund balance for repairs and the replacement of floats at Town Landing.

Chair Hemphill announced that the appropriation amount should be reduced to \$82,430. Several items were included in the original estimate that staff originally thought were additional.

Barney Baker of Baker Design Consultants said his firm was hired last year to review the condition of the floats and recommend a plan for replacement of aging floats as well as a master plan for the design of the float system. He discussed the elements of the master plan; adding floats, moving the dinghies away from the eel grass bed, and adjusting the gangways. The master plan was received well, but was expensive and was pushed off into the future. In October, the windstorm that struck wiped everything away. The Town conducting a bid process, and he has recommended awarding the bid to Custom Float Services, the low bidder. He discussed the project costs, which include design work and construction management. He said they pre-ordered the materials for the floats in order to ensure that the project would be complete prior to the boating season. The total project comes to \$279,430. The Town received a SHIP grant for \$56,000, with a previously approved local match of \$56,000, and has received \$83,000 in insurance proceeds. The remaining cost is \$82,430.

Councilor King asked how long it will be before the docks are back in service. Mr. Baker said the boat ramp floats will be done by April 18. The replacement floats will be done by May 25. The five additional floats will be done later this season, but there is no date on those yet.

Councilor Kitchel asked if the replacement floats are the same size as the original; Mr. Baker said the boat ramp floats are wider because they want the gangway to be closer to ADA compliance.

Councilor Farber asked if the \$56,000 grant match was appropriated already.

Lt. John Kilbride said it was. It was included in the grant application and it is in this year's CIP budget.

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

Councilor Kitchel asked about the life expectancy of the main pier. Mr. Baker said it should last 40-60 years; there are components that should be replaced after 40 years but the pilings will usually last 60 years.

Councilor Farber moved the appropriation of \$82,430; Councilor King seconded. Motion carried 5-0.

Item 6 Public Hearing on amendments to Sections 19-8, 19-9, and 19-10.1 of the Zoning and Site Plan Review Ordinance relative to amending maximum residential density allowances for two- and multi-family development in the RA, RB, and RD Districts.

Councilor Farber asked about comments that were made at the MRA hearing and whether those residents would be impacted by the proposed amendment.

Ethan Croce, Community Development Director, said he couldn't speak to the particular examples, but reviewed the impacts of the proposed amendment. A single-lot development would not be impacted; a development subject to Planning Board review would be.

Councilor Farber asked about the review of soil suitability; she thought the Planning Board reviews that anyway. She asked if they were asking for language to be added to the ordinance.

Mr. Croce said there are many elements that govern how many units can be developed on a property. Soil suitability does play into it and the Planning Board takes that into account when determining the location of septic systems and where dwellings can be located.

Councilor King felt reviewing soil suitability was more a Planning Board responsibility.

Councilor Farber felt it was cumbersome to write an ordinance to address this level of specificity. She felt it should be reviewed case-by-case.

In response to Chair Hemphill, Mr. Croce said it is common that the Board would review soil suitability. The density of development and its impact on septic is also governed by the number of bedrooms proposed. A two-unit development with 1 bedroom/unit would have less impact than a single-family home with 5 bedrooms.

Mr. Croce gave a brief history of the work on this issue to date and summarized the proposed amendments. After two workshop sessions last fall, the Council determined the best course of action was to equalize the density between single-family, two-family, and multi-family housing.

Councilor Farber said no change is proposed to the minimum lot size. Mr. Croce said that was correct.

Councilor King said the maximum residential density is changing, and it would impact certain developments and not others. Mr. Croce said it would impact development in RA, RB, and RD that requires Planning Board approval.

Chair Hemphill opened the public hearing.

Steve Hundley of Brookfield Road felt the Council has made remarkable progress addressing the residents' concerns. He was comfortable that the maximum density requirements in the district tables are firm and will not change regardless of the type of development proposed. He said the Town's ordinances are very confusing, difficult to understand, and are subject to interpretation and he gave several examples. He said cluster systems in areas without sewer should be treated differently. He supported the proposed amendments.

Chair Hemphill closed the public hearing.

The order was scheduled for March 12.

Item 7 Public Hearing on amendments to Section 19-18 of the Zoning and Site Plan Review Ordinance relative to expanding the applicability of the Resource Conservation Zoning Overlay District (RCZO) to two-family and multi-family development.

Mr. Croce said this item came out of the same workshop session last fall and is a recommendation made by LPAC. Currently the only type of development that is required to comply with the overlay is single-family housing. LPAC has recommended that the overlay be extended to apply to two- and multi-family housing as well.

Councilor Farber said at the MRA review the Planning Board recommended passage of these amendments with no changes. This recommendation was discussed at the same time as the changes to two and multi-family development. She didn't think those types of development should be treated differently than single-family housing. She looked at this as administrative clean-up; it should be consistent across the board.

Chair Hemphill opened the public hearing; there was no public comment.

Councilor Jones asked if the moratorium should be repealed at the same time. Councilor Kitchel said the moratorium has a sunset. Councilor King wanted to make sure the moratorium ends at the same time that these amendments are approved.

The order was scheduled for March 12.

Item 8 Public Hearing on an amendment to Section 19-11.5.9.5 of the Zoning and Site Plan Review Ordinance relative to wall sign lettering size in the VC Districts.

Mr. Croce summarized the history of the item; the town's sign ordinance was amended in July 2017 to comply with the Supreme Court's decision in *Reed v. Gilbert* regarding regulations of sign content; the new language limited the size of lettering to 15 inches. Two new businesses in the Falmouth Shopping plaza have requested a change to these ordinance, given the distance between their property and Route 1. This language gives flexibility to the Planning Board in considering distance to the street when approving lettering size.

Councilor Farber said this only addresses the specific need in the VC districts; she said this needs to be expanded to all the commercial districts. Given the work load of the CDC currently, she suggested it be added to the work plan for next year.

Chair Hemphill opened the public hearing; there was no public comment.

The order was scheduled for March 12.

Item 9 Presentation by Godfrey Wood, Executive Director of Habitat for Humanity Greater Portland, regarding a proposal to create an affordable housing development on Town-owned property on Marshal Drive, off Woods Road.

Godfrey Wood said Habitat for Humanity is interested in building approximately 25 homes on property behind the police station. The homes would be available for families with limited incomes and they would be open to granting priority status to applications from Falmouth town employees, business owners and current and past residents. Their initial concept plan includes 13 acres of conservation land. The proposed homes would be similar to other projects they have built and would include energy efficient buildings and a neighborhood design. He said the median listing price for a home in Falmouth today is \$636,000 and the average rent is \$2950/month. The definition of "affordable" housing means spending no more than 30% of total income on housing. Habitat qualifies families based on income, and works with a local community bank

to finance the home at 100% with payments no more than 30% of the families' income. The family gets a first mortgage with the bank and then a second, silent mortgage with Habitat. They pay no interest or principal on that second mortgage until they sell the home. Habitat can afford to do this because they build the home with the families; each family is required to put in 275 hours of work to build the homes. They also do fundraising, sponsorships, receive materials at cost from Hancock Lumber, and raise money with their ReStore. The families have to have a stable credit and income history. Habitat has a very low foreclosure rate. He said they would like the Town to contribute the land for this project, and maintain the road and sewer. The Town would receive an estimated \$87,500/year in property taxes on the homes once the project is built.

Councilor Farber thought it was a great idea, but she wondered if the Town should put this out as an RFP to other non-profits. A donation of land is a contribution; they would do an RFP for anything else they were going to sell. She liked that this is a request for a donation of land and not a contract zone; it is designed to follow the current ordinances, and would be subject to growth caps. If they were going to donate this land for affordable housing, she would like some kind of agreement that if the development fell through, the land would revert back to the Town and not be sold. She thought the Council should consider it.

Councilor King agreed with the RFP idea. She like the proposal and that the homes were energy efficient. She supported pursuing the project.

Chair Hemphill agreed; he liked the suggestion of offering these homes to families with Falmouth ties.

In response to Councilor Farber's concern, Mr. Wood said that they have an agreement in Scarborough that the Town owns the land until they develop each lot; they take the land on a lot-by-lot basis.

Item 10 Council review of the draft contract zone agreement for Homestead Farm LLC and Turning Point Development LLC.

Chair Hemphill said the applicant has submitted revised documents based on the comments at the last Council meeting. Staff submitted a cursory review of those documents late this afternoon, but the Council has not had a chance to review those comments.

Matt Ek of Sebago Technics, representing the applicant, summarized the changes made to the contract zone since the last meeting. Staff requested that exhibit 5, which addresses the roundabout design, be rewritten, and they are willing to work with staff on that.

Councilor Kitchel said the reference to street lights being "consistent" with the lighting on Route 100 is ambiguous. Mr. Ek said their goal is to use the same fixtures as those the Town selects for that section of Route 100 but those fixtures have not been selected yet.

Councilor King asked about the residential uses in the commercial area; Mr. Ek said they don't know how many or what types of housing would be in that area, but they won't exceed the total number allowed.

Councilor Farber asked if there is a max number of residential units that can be built in the commercial area; Mr. Ek said there is a maximum of 153 dwelling units that can be built in the entire project and they are not going to exceed that.

Councilor Farber said the exclusion of accessory dwelling units (ADU) should be in place for everything that is excluded from the growth cap, and not just for those that are limited by size. She said they can't limit how many 55+ homes are sold, but they can limit how many are exempt from the growth cap.

David Chase, developer, said every lot will be restricted from ADU's by deed covenants; the lots are too small. He asked if ADU's are subject to a growth cap. Mr. Croce said yes; there is a town-wide cap of 20 per year.

Mr. Chase said there will be a maximum of 153 dwelling units in the entire zone, no matter how they address it. They are at 125 with the residential development as proposed, including the duplexes. He was happy to add the restriction to the agreement.

Councilor Farber said the current language for the retail/commercial area would allow for 25% of the first floor to be residential and 75% commercial. She asked how this is different than a multi-family building. Mr. Ek said there is a limit in the VMU zone for 6 maximum residential units per building, with an average of 4 per building.

Mr. Croce said the language in section 3b should read "Any use as allowed in the VMU Zoning district" since the intent was to allow current VMU zoning to govern the retail/commercial section of the project area.

Councilor Farber pointed out that the language currently reads that changes to allowed uses could be made by the Council. Her understanding is that the contract zone must be consistent with the underlying zoning and she didn't think that was clear with this language.

Mr. Croce said there is some flexibility as to what uses would be consistent with the underlying district. This is different than the conditional zoning language, which only allows the Council to allow uses that are more restrictive than what is otherwise allowed.

Councilor Farber thought there should be more details on what the public park is going to be. She asked if it would include playground equipment, a basketball court, etc. Mr. Ek said they previously submitted a plan of what the park would look like; Councilor Farber suggested that it be added as an exhibit to the agreement.

Mr. Croce said the current language requires that Community Programs staff sign off on the final design. Mr. Chase said they met with the Director and PACPAC on the design. They can include it in the agreement.

Councilor Farber said the entire development could end up being 153 dwelling units of people 55+ and it would be excluded from the growth cap. She didn't think this was the intent, and was concerned about the impact on Town services.

Mr. Chase said they could cap the exemptions; he can't discriminate on who buys the homes. He doesn't envision this as a 55+ development.

Councilor Farber asked whether all 55+ dwellings would be exempt under the ordinance; Mr. Croce stated that the ordinance language addresses 55+ multi-family housing only. The contract zone language specifically exempts single- and two-family dwelling units for 55+ persons.

Councilor King agreed they needed to put a cap on the exemptions but she wasn't sure how to quantify it.

Mr. Chase thought they would see 25-30% of the homes sold to 55+; he suggested putting language in the agreement limiting the exemptions to 25% of the homes. That would come to about 38 homes.

Councilor Farber said adding 38 exemptions for 55+ homes to the minimum 32 exempt entry-level housing units would give them 70 units exempt from the growth caps.

Councilor Kitchel didn't think there would be a large number of 55+ sales; he thought there would be more interest in the affordable homes for young families. He agreed with the 25% limit.

The Council discussed how to address the concerns on the growth cap, whether to break it out by phase or by year. Councilor King asked about capping it per year, in recognition of the fact that the Town limits permits by year.

Mr. Croce said there is no language in the agreement that prohibits the developer from building all three phases at once. Mr. Chase said it is not practical to build them all at once, but he would probably start phase 2 once a certain percentage of phase 1 was complete to keep inventory and momentum, for example. He suggested a cap per phase of 25%. Mr. Croce suggested language that "no more than 25% of units per phase would be exempt under the 55+ exemption".

Mr. Chase said the entry-level housing is going to be exempt anyway. He estimated that the total number of exempt units in the development would be about 50.

Chair Hemphill asked how many lots would be included in the phases. It isn't specified in the plan. Mr. Chase said the lots shown on the plan will not vary more than 10%; they are limited by the available street frontage. Mr. Ek said they don't know how many units will be built in the commercial area and they broke that out of the phases.

Councilor King said the number of units has changed over the course of this process; she said 153 dwelling units feels like a lot for Falmouth. She asked if there was a way to narrow their range.

Mr. Ek said they originally were looking at more than 153 and had asked for an increase in the net residential area. They are now asking for less than what the Town currently allows.

Chair Hemphill argued that this is very different than what the Town would allow given the exemptions they are requesting.

Councilor Farber asked about the wetland setback provision. Mr. Ek said there is a 50-foot setback from any wetland that is 4000 sf or larger. There are a couple wetlands of that size on the property, including the one behind Harmons. There is one lot that would be impacted by a 4-foot wide finger of that wetland; imposing a 50-foot setback on that lot would make it unbuildable. They were originally looking at filling that wetland. There is another wetland on the Ferrante lot they are going to cross with a road and there would be a couple lots near there. They are going to move the lots further away from the wetland but are asking to allow a 25-foot setback from that wetland.

Councilor Farber asked if these are low-value wetlands. Mr. Croce said there is a 50-foot structural setback from wetlands Town-wide. The extra setbacks for high-value wetlands are only applicable in the residential zones, not in VMU.

Councilor Farber asked if the 25-foot proposal would be a no-cut buffer. She asked if this 50-foot setback request could be addressed by the Planning Board for specific lots as part of the site plan approval. She was concerned about changing the setback for the entire project. Mr. Ek argued that those are the only two wetlands of that size in the project area. Mr. Croce said the Planning Board does have waiver authority on the 50-foot structural setback.

Councilor Farber suggested the Planning Board deal with this issue at the site plan review; she didn't think the plans were specific enough at this point for the Council to grant this as part of the agreement. Councilor King agreed.

The Council discussed how to proceed; removing the language, or adding a note to the agreement that the request should go to Planning Board.

Mr. Ek discussed the work they have done to minimize their wetland impacts with this development; they were trying to maintain the lot sizes on the three impacted lots without moving the roads. He said they are not looking at impacting the wetlands beyond the crossings, just reducing the buffers. They said it will all be reviewed by DEP as well as the Planning Board.

Councilor King asked if they could submit a map with the specific areas highlighted; Mr. Ek said they can do that and amend the language to reference the exhibit. He showed the subject lots and the wetlands on a map of the project and discussed the impacts.

Mr. Croce said staff suggested making the reduced 25-foot buffer a no-disturb vegetative buffer to help with water quality. Mr. Ek said one of the three lots is a field; even the wetland in that area is a field. A vegetative buffer would require that lot to have a different backyard than the other land in that area.

The Council will hold a public forum on this item at their March 12 meeting.

Mr. Croce discussed the staff comments. One policy question that remains is the process by which the agreement could be amended in the future. Another question is whether the roundabout is required or optional, whether a four-way stop could be designed, and a request that the design of the roundabout either be more specific, or more general to give the Planning Board flexibility in reviewing the design. Mr. Ek said their submitted language encompasses the three typical sizes of a roundabout; they would prefer the middle to accommodate larger moving trucks and fire equipment. They would prefer a roundabout rather than a 4-way stop, but would do whichever the Council preferred.

The applicant and Town staff will work to incorporate the changes discussed for a version to be posted for the March 12 meeting.

The Town Council and School Board will hold a joint meeting on March 5 at 5:30 at the elementary school to review the school enrollment study. There will be an opportunity for the public to comment at that meeting and the report will be posted online prior to the meeting.

Councilor Farber asked if the Planning Board would review the traffic movement as part of their review; Mr. Croce said they would unless they waived the requirement, which would be unlikely with such a large development. Mr. Ek said they will be required to file for a traffic movement permit with the DOT, which will also be reviewed by the Town.

Item 11 Supplemental appropriation and transfer in the amount of \$450,000 from unassigned fund balance for the LED street light conversion project.

Chair Hemphill reported that the amount should be reduced to \$380,000; \$70,000 was previously appropriated for this project.

Kimberly Darling gave a brief history of the project to date. Prior to changes in the law, municipalities only had the option to lease unmetered fixtures on poles; they were owned by the utilities. The Town now has the opportunity to purchase the fixtures and replace them with LED, energy efficient fixtures. The Town could either maintain those, or contract with the utility to maintain them. She discussed the cost savings the Town will realize once the fixtures are converted, both in lease costs and in energy usage. She talked about the work that has been done to date, including installing some trial fixtures to evaluate the quality of the different light options. The next steps are to acquire the existing fixtures from CMP, conduct an investment grade audit, and procure the new Acuity fixtures staff have selected. The cobrahead fixtures are scheduled for installation from April-July, with decorative installations scheduled for July.

Councilor King asked about the acquisitions. Ms. Darling said the Town has to buy all the fixtures that are currently on the poles. Councilor King asked what happens to them after that

Mark Carter of RealTerm Energy, the Town's consultant, said the existing fixtures will have little value and will be recycled. That is a cost-neutral process, since there will be some money from the recycling company. The Town will also acquire the mast arms and the wiring, and the grandfathering of the locations.

Councilor Farber asked which light they selected. Ms. Darling said they picked the warmer light; they didn't receive much public feedback on the trial fixtures. After reviewing the trial installations, staff selected the 3000 kelvin fixtures. There is a 2700 kelvin option, but it is a new option and it isn't widely available.

Councilor Kitchel asked what is meant by kelvin; Mr. Carter said it is a temperature range. In this usage, it refers to the temperature at which a certain color is emitted by metal as it heats. Moonlight is 4100 kelvin, for example. The 3000 kelvin light is more yellow/orange and is closer to the high pressure sodium fixtures most people are familiar with.

Councilor Kitchel asked how long the LED lights would last. Mr. Carter said they come with a 10 year warranty, but should last about 23 years.

Town Council Minutes

February 26, 2018

Page 9 of 9

Councilor King asked where they can see these lights. Councilor Jones said Portland is installing them now; he has seen them on Ocean Ave and they look good.

Ms. Darling said the 3000 kelvin fixtures are dark skies compliant.

Mr. Carter spoke about the RFP issued for fixtures. They received 5 proposals. They each were full cut-off to be dark skies compliant, but they differed in how the LED is structured. The Acuity has a single LED globe, which puts the light on the ground exactly where you want it.

Chair Hemphill asked what kind of lens is being used; Mr. Carter thought it was acrylic that goes over the LED.

Councilor King asked about the controls for the fixtures and who would control them. Mr. Carter said intelligent controls are available that can be set. Each of the fixtures will have a controller that could be added later, but when installed they will have a photosensitive cell that will dim and raise the light automatically.

Ms. Darling said the Town has smart controls on the bridge lights, and have never done anything with them. The idea is to save money now by installing controls at a later date.

Councilor Kitchel asked the price on the Acuity fixtures. Mr. Carter thought it was \$130-150 each. Prices have come down significantly.

Councilor Farber asked who would do the maintenance on these; Ms. Darling wasn't sure. These fixtures require little maintenance. Mr. Carter said there will be several options. The work will need to be done by electricians. In RealTerm's experience, they are only seeing a 0.5% failure rate.

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

Councilor Farber moved the appropriation of \$380,000; Councilor King seconded. Motion carried 5-0.

Adjourn

Councilor Kitchel moved to adjourn; Councilor King seconded. Motion carried 5-0.

Meeting adjourned at 10:11 pm.

Respectfully submitted

Melissa Tryon
Recording Secretary