

Town Council Meeting Minutes April 9, 2018

The meeting was called to order at 5:30 pm.

Roll Call

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

Councilors King and Ferrante were absent.

Item 1 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 Kitchel moved the order; Councilor Farber seconded. Motion carried 4-0.

The Council returned from executive session at 7:00 pm.

Item 2 Public Hearing on an amendment to the Code of Ordinances Div. II-2-3-12. *Economic Improvement Committee* to update the charge of the Falmouth Economic Improvement Committee (FEIC).

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

The order was scheduled for April 23, 2018.

Item 3 Report from the Town Manager on the Library's successful fundraising efforts and an order to amend the previously approved memorandum of understanding (MOU) between the Town and the Library, dated September 2016 and amended December 2017, changing the required date for the Library to report to the Town Manger on its fundraising efforts.

Marsha Clark, President of the Board of Trustees, said they raised \$2.9 million by December 31, 2017 and they have raised even more since then. They need the extra money to cover construction costs; the cost estimates they have are 3 years old and there will be change orders. They will apply for more grants in the next year to make sure they are on budget. The architects are working on the necessary approvals and permits; they are waiting on final DEP approval. The staff are planning the move to Mason-Motz for the end of June, and groundbreaking is scheduled for August. They are looking for volunteers to help with the move. The Board has worked with the Town's Finance Department to finalize the necessary reports and with Gorham Savings Bank to secure a bridge loan to cover expenses while pledges come in.

Town Manager Nathan Poore said the Library has met their obligation and the intent of the MOU; the MOU always included a bridge loan to cover the time between construction and when the final pledges are due. When reviewing the language of the MOU, it seems to say that the bridge loan must be closed by December 2017. It doesn't make sense to have closure of the loan so long before it is needed. This amendment moves that date to May 30, 2018. He said this is a technical glitch in the MOU language.

Councilor Farber said the Board of Trustees is taking out the bridge loan, not the Town. Mr. Poore said that is correct.

Councilor Farber said the Library has submitted its documentation to the Town and it has been reviewed by the Finance Director and the Town Attorney. She asked if everyone is comfortable with what has been submitted, what is in hand, and the cash flow. Mr. Poore said there was a little work required to determine when the pledges would come in to meet the cash flow needs, but they are satisfied. The money the Trustees recently voted to use is a loan from their reserves, and not a donation. It is important to note that they have these reserves for operating expenses.

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

Councilor Farber moved the order; Councilor Kitchel seconded. Motion carried 4-0.

Item 4 Order to establish a Charter Review Commission.

Councilor Farber asked about the process. Mr. Poore said this order establishes the Charter Commission itself and the following order sends it to the voters.

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

Councilor Svedlow moved the order; Councilor Farber seconded. Motion carried 4-0.

Item 5 Order to place the question of whether to establish a Charter Review Commission before the voters at the June 12, 2018 election.

Councilor Farber asked about the language on the question; she thought the Commission does not revise the charter. It makes recommendations and sends those to the voters. Only the voters can revise the charter. ??? what if the voters vote it down.

Mr. Poore said the language is pulled directly from the State statute. This is the same process the Town followed 10 years ago.

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

Councilor Farber moved the order; Councilor Svedlow seconded. Motion carried 4-0.

Item 6 Public Hearing on the draft contract zone agreement for Homestead Farm LLC and Turning Point Development LLC.

Matt Ek of Sebago Techics, representing the applicant, gave a brief presentation of the project. The Planning Board has held its hearing and made recommendations. There are three development areas: Area 1 is residential, and Areas 2 and 3 are mixed-use. There are three parks included on the plans.

Dave Chase, developer, said he is sensitive to the comments made by the public and the comments from the Council and Planning Board as they wrestle with the size and scope of the project. Many of the questions center around the number of exemptions that he has asked for. He has reviewed them and wondered how many of them he really needs. He said he is currently asking for 22 exemptions for 55+ housing; he could cut that in half, or even remove them entirely if the Council wishes. There is an exemption status for that type of housing already in the ordinance but his definition does not fit the ordinance definition. He is also asking for exemptions for affordable housing; affordable housing is currently exempt from growth permits, but in the last 10 years not one permit for affordable housing has been pulled. He used a definition based on Maine State Housing Authority guidelines with a cap of \$280,000. He was trying to develop a path forward to affordable housing, but he was willing to drop down to 20 exemptions for affordable housing if the Council wants. This lowers his request from 55 exemptions down to as few as 20. He has stated in the past that he intended to build 40 homes a year; he said he is willing to drop it to 35 homes and bring it from a 3-year project to a 4-year project. This lot as currently zoned would allow 153 units; he was once asking for an

increase but isn't now. If they dropped that down to 139, it would be 122 units in Development Area 1, 6 units in Area 2, and 10 units in Area 3. He believes this is a good project and will be a great neighborhood. In the Falmouth Flats area, the same size property has about 147 houses on it. That subdivision was done without the benefit of zoning or landscape architects, and he thinks it is the best neighborhood in Falmouth. He has friends that grew up there and it was a great place to live. They are talking about 139 units over 4 years; the school report forecasted 550 units over the next 10 years and those houses have to go somewhere. This property is in the growth area, and he believes that growth should be directed to this area. The alternative is for Hothems to develop their lot with a dead-end road, Ferrante to develop that property with a dead-end road, etc. This is a well-thought out plan.

Chair Hemphill opened the public forum.

Keith Noyes of Gray Road said the size of the project is too big; he was concerned with the traffic and schools and the Route 100 project. He hasn't heard any feedback from the Council to his questions. There are 9 residential units that abut this property and they are the only ones that are noticed of these meetings. No one ever talked about the traffic report and no engineer has been to the Council to explain it. He talked about the impact of the schools, the impact on the environment, and the noise from the turnpike. He said 800 people signed a petition opposing this project and the Council never mentioned it. There is a sitting Councilor that is involved with this project. He asked about the parking lot for Harmons; he didn't see the lot on the plan this time. He said development areas 2 and 3 include residential units in the contract, but he wondered how they would get that many units on those areas. He said they need to review the contract again; there is nothing in this for the Town. He asked the Council to reconsider this plan. He didn't agree that this would be like the Flats. He has seen the development Mr. Chase did in Cumberland.

David Murdoch of Brook Road didn't agree that this is like the Flats. All the houses in the Flats were built at different times and in different styles. If people look at the development in Cumberland, they need to multiply it 5 times to see how this will look. He strongly opposed the development and the density of the neighborhood that they are going to drop in the middle of his village. The Council has ignored the overwhelming opposition to this development. This project doesn't fit the character of the Town. He spoke about the traffic impacts, school impacts, infrastructure demands and impacts on quality of life. He said this would bring about all the problems that come when you box a bunch of people in a sardine box type of development. Once this thing is in place, and the problems come out, he argued the Councilors won't be proud of it.

John Winslow of Gray Road researched the Flats; he said the average lot size down there is 20,000 sf and there are no gullies. It is all flat. Marston St is all ¼ acre lots; that is the norm. He said there is a lot that the public doesn't know about the contract zone; it does not dovetail with any Comp Plan approved by the Town. This area is designated as a commercial growth area with a residential influence; this also conforms with the Route 100 vision plan. This plan is 98% residential, and there isn't much property left to put commercial development. He said the Council was reckless when it spent \$8500 on a sketch plan for this area that contradicts the Comp Plan. The contract zone ordinance states that a contract zone must be consistent with the Comp Plan. There aren't any public benefits under this contract zone that can't be accomplished under current zoning. He doesn't think that the Town Charter allows the Council to make any exemptions to the growth permit ordinance. This development would cause a detrimental financial cost to the Town, adding costs to Route 100 infrastructure, the wastewater infrastructure, and the schools. There has been a dramatic increase to property taxes in recent years. The Council has a duty to the residents of the town to make sound fiscal decisions.

Steve Dyer of Mountain Road asked the Council to reread the comp plan, the long-range growth plan and the contract zone ordinance. This property and area of the VMU district is targeted for commercial mixed-use growth. This is the only area in West Falmouth for commercial growth. He agreed with previous speakers that this isn't worthy of a contract zone. He said this contract would reduce the frontages from 150 feet to 50 feet. He argued that the concept plan showing what could be built under current zoning isn't practical; he is a

civil engineer and it could not be built like that. The VMU district is 420 acres with only 122 house lots. This would more than double it. That isn't consistent growth. Its incomprehensible. He argued that this doesn't look like good government, with a Councilor as part of this project. The schools are at capacity now. Everyone he talks to can't believe that this is moving forward. It's too big, too fast, and is not part of Falmouth. He said the people do not want this. He didn't understand how they thought this was good for the town. He urged them to have an economic impact report done to see what the fiscal impact would be of this development on the Town.

Kristina Walker of Rogers Trail opposed development at this pace and this size. She said the benefits to the developers and to buyers are clear, but it isn't clear what the benefits are to the Town. She asked if the Council has looked at the costs of this development versus the benefits it would bring. She sees the costs to the schools, the roads, municipal services. She thought taxes would go up as a result of this. She said everyone is against this and it doesn't feel that the Council is hearing that.

Amy Robidas of Falmouth Road echoed the previous speaker. She was frustrated that it sounds like a done deal with the Council. She said the benefits listed by the developer are all for the residents of this neighborhood, not to the current town residents. The Town is getting nothing from this. She argued that if they wanted to grant exemptions for affordable housing, there should be a longer term than 3 years. She said current underclassman in the high school can't eat in the cafeteria because there isn't enough room. She asked the Council not to allow this to happen.

Linda Dyer of Mountain Road read a timeline of the project to date and reviewed the minutes from meetings of the CDC, the Route 100 Committee, and the Council. She also studied the houses in Falmouth that sold from January 2016 to present; 239 homes sold in that time, 79 of them were under \$300,000. She thought this project is holding up the Route 100 infrastructure project; it was originally scheduled to be completed in Fall 2018 and hasn't even started yet. She said there is a conflict of interest with this project. She asked if the roundabout is in place to stop the traffic that is cutting through to avoid the light at the intersection at Mountain and Gray Road. She said this is not a good thing for Falmouth.

Josh Barrett of Charlotte Drive was not convinced that this project would not have a negative influence on the schools. He was deeply concerned that this project will impact the schools, which is large reason why his family chose to relocate to this town.

Charlie Hesson of Brook Road said there are many compelling reasons why this should not move forward: schools, traffic, and how well the current zoning has benefitted this town. He thought they should have a full Council to make a decision of this magnitude. There are several vacancies in the upcoming election; sending members to the Council with a mandate out of the upcoming election seems to be a good idea. Everyone he talks to, on every political spectrum, agrees that this isn't a good idea. The people that will benefit from this are the developers, property owners, and the people who would live here, not current residents. He was also concerned about the next large-scale project that comes in. He didn't want to open Pandora's box.

Susan Christie of Brook Road has lived on the east and west of town. She didn't think this development was wise management and would negatively impact the town. She shared the concerns that others have raised. Phasing doesn't mitigate the impact, and exemptions to the growth cap offers limited benefit to the Town. They would welcome diverse housing opportunities throughout Falmouth on a smaller scale. She supported exemptions for the proposed Habitat for Humanity project. There is a need to balance the home to business ratio on this property. Commercial development has fewer impacts on town resources, doesn't impact the schools, and adds needed tax revenue. She argued that the benefits listed by the developer are already available in West Falmouth. 139 houses do not make a neighborhood but a housing complex. She was concerned with the impacts on the existing neighborhoods. She asked why there is an egress onto Mountain Road; it would create a cut-through and create a negative impact. Traffic would impact the environment and the people who use Brook Road. She hoped the Council would deny the contract zone.

Scott Walker of Gray Road echoed the concerns raised by the other residents. He argued that the concept plan the developer submitted showing the development that could be done according to current zoning is not accurate; there is no way that could be built as presented. He spoke about the growth rate; the Town has issued 40 permits so far this year, leaving 25 for the developer to pull this year and putting 65 new homes in the town this year. The developer could then pull 40 early next year, leaving 25 for anyone else. Since the Town has averaged 40-42 per year, this would leave the town 17 short of the average. He could then pull 15 additional exempt homes as well. He argued that the Town could be looking at 120-130 new homes for the 2019 school year as this is structured right now. The School Board study considered up to 65 homes per year. The Planning Board passed along recommendations, but had a long list of conditions. He asked them to allow the Board to do their work to keep the town looking nice. This is the first contract zone the Town has seen, but they didn't have to take this one. There would be another developer that would come along.

Megan Scott of Blackstrap Road supported the project. There are lots of folks her age that are struggling to find affordable homes in many communities, not just Falmouth. Many families both outside and inside the community would support having options for housing and to encourage businesses in the area.

Elwin Hanson of Woodville Road said zoning is supposed to protect the people already living here, as well as those that would live in the new development. He supported the previous comments. He recommended that the Council deny this contract zone. 50 units in this area would be in line with what is there now. The school will be impacted without this development; it wasn't built big enough to start with. He said there would be 300 cars in the development. He said the road should be 24 feet wide, not 16 feet. It won't be that wide in the winter. He urged the Council to deny this development. This is no way to celebrate the 300th anniversary of this town.

Julie Porter of Mountain Road said the egress on Mountain Road will need to move 15 feet away from her property. She spoke about her efforts to have the area recognized as a historic district.

Sarah Esmond of Rockaway Road agreed with the objections to this development. She felt the Council was more concerned with the needs of the developer than the needs of the students and current residents. The Town has allowed slow, measured growth up to now. She hoped they would vote against the development.

Luke Hankins of Brook Road said both the traffic and school impact study were done based on changing parameters and he asked if they should be redone. The traffic study didn't consider the impact on roads in the surrounding areas; the residents of this development will probably use Brook Road to avoid traffic. He wondered what would be done to mitigate that impact. His kids walk and bike on Brook Road. He said a 3-year limitation on affordable housing isn't long enough.

Todd Kelly of Sulky Way said this same developer was able to build 141 houses in two years in Cumberland. This project is going to be 3 years; that is hard to swallow. He alleged that they are taking land from a resident by eminent domain for the turning lane for this project. That wasn't in the Route 100 plan.

Mr. Winslow asked the objective of tonight's meeting. Chair Hemphill said this is the formal public hearing on the current draft of the agreement.

Mr. Hanson asked about the process. Chair Hemphill said no action is scheduled for tonight. Mr. Poore said the next step is for the Council to make a decision. Since the Council doesn't have a quorum to vote on this item at the April 23 meeting due to a Councilor with a conflict of interest, they can't take action until at least May 14. The Council can discuss changes tonight and again on May 14. If those changes are substantive, there would be another round of public hearings.

Chair Hemphill closed the public hearing.

Councilor Farber said she thought planned development can be advantageous to the Town as opposed to three or four different developments that come in at different times without a cohesive plan. She discussed the process to date; the multiple public hearings are required and the forum was added to allow for more opportunities for public comment. No zoning ordinance is perfect and there are limitations in the VMU.

There is a commercial element in the VMU, but most of this property does not front Route 100. This could be a car lot, congregate housing, even a cattle farm. There are other opportunities in the zoning ordinance, but they wouldn't exactly lead to a comprehensive development. This is a large area. People who own property want to do something with it. If the Council turns this down, it will still be developed and it might be pretty awful. The zoning ordinance doesn't guarantee something good. Her reason for continuing this conversation was to have input in what happens here.

Councilor Kitchel said the contract zone allows the Council to weigh in on the project. If it isn't a contract zone, the developer goes directly to the Planning Board. The contract zone gives them some leverage in the design that suits the town. The CDC worked with the developer on draft after draft of this project before referring it back to the Council. They massaged this thing until it was closer to what they wanted to see. He still hasn't made up his mind on this development. The meetings have been well-publicized, and are on the website. The school population numbers have trended down in recent years.

Councilor Svedlow agreed with Councilor Farber and Councilor Kitchel. He didn't have major issues with the concept of the development but wasn't sure whether it fit in Falmouth. He said the most important question for him is the rate of growth and whether it matches how Falmouth is trending. Tighter development with open space around it can reduce environmental impacts and has worked well in other areas. He welcomed the public comment; some comments touched things that he hadn't thought of before.

Chair Hemphill said they have a group of property owners that have the opportunity to develop their lots either together in this type of planned development, or independently. This is a logical place for development, where the Town has chosen to invest in infrastructure, with proximity to West Falmouth businesses and the turnpike. There are many reasons why this is smarter growth than the potential alternatives, like larger houses without road connectivity. The developer has worked in good faith, and the Council has spent hundreds of hours on this project. It isn't being taken lightly by any of them. He is keeping an open mind.

Councilor Farber said they should leave the Planning Board to do their job. She wanted the Board to have the ability to make adjustments as needed to the streets. She didn't want their decision that they liked the roundabout to prevent the Board from approving a 4 way stop instead. The Board wants the ability to do their job in reviewing the plan. This agreement should be limited to only those things the Council can do and they leave as much as possible to the Board. She said there has been a suggestion to extend the entry-level price point beyond three years, and tie it somehow to the MSHA number. She assumed that sewer is one of the first pieces of infrastructure that will be installed. She wanted more clarity on the planned wetlands impacts and the fill. She wondered how this would overlay with the current construction of the Route 100 infrastructure project. She said the timeline of Route 100 construction is not tied to this project; that is impacted by MDOT and its need to secure land rights.

Chair Hemphill said he was grateful for Mr. Chase's comments regarding eliminating the 55+ exemptions, a reduction of affordable home exemptions, and extending the timeline to 4 years. He supported the Planning Board's request to let them do their job. He would like to see the developer reduce their impacts on wetlands.

The Council discussed the process moving forward. They asked for a workshop on this with a redlined version of the document showing changes since the March 19 draft and the changes proposed by Mr. Chase. Mr. Poore summarized the Council's discussion. The Council agreed that the Planning Board should review the details of the project, and the language of the contract zone agreement should identify the standards but not prevent the Board from requiring something more. The Council is interested in flexibility in moving affordability further out with perhaps a tie to MSHA standards; they want more information on projected wetland impacts and filling, including voluntary donations for wetland mitigation, and an update from staff on the Route 100 timeline compared with the timeline on this project. He said the delay to Route 100 is due mostly to the right of way work; it is about 1 year behind schedule. The next draft will also contain Mr. Chase's proposed changes. There are continuing concerns about the size and rate of growth but no specific suggestions.

Councilor Kitchel asked the public if they would be more supportive of this development if it was smaller, with fewer homes. Members of the public expressed that they would like homes built more in keeping with the current rate of growth. Mr. Murdoch wondered how low the developer can go for the development to be feasible.

The Council scheduled a workshop for the May 14 meeting, with action tentatively scheduled for May 30. In response to a question from the public, Chair Hemphill said that the Council can waive Council rules to allow public comment. The draft, redlined agreement including changes made since the March 19 draft will be published prior to the May 14 meeting.

Item 7 Order to authorize the Town Manager to execute a new Submerged Land Lease for the pier and float system at Town Landing.

Councilor Svedlow explained that the State owns the land under the water up to three nautical miles. The Bureau of Parks and Lands requires the Town to lease the land under the water where the docks are located. Since the new docks will be longer and wider, they need to amend the submerged land lease. This amendment will also extend the term of the lease.

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

Councilor Farber moved the order; Councilor Svedlow seconded. Motion carried 4-0.

Adjourn

Councilor Kitchel moved to adjourn, Councilor Svedlow seconded. Motion carried 4-0.

The meeting adjourned at 9:39 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary