

Town Council Special Meeting

Minutes

April 18, 2018

The meeting was called to order at 5:33 pm.

Roll Call

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

Councilor Svedlow was absent.

Item 1 Discussion on a recently submitted voters' petition concerning high density residential zoning in established areas of the Town.

Chair Hemphill explained that a petition was submitted with 869 signatures on it; 809 were required. The petition was then given to the Town Attorney for legal review.

Aga Dixon of Drummond Woodsum, serving as Town Attorney in Amy Tchao's absence, explained that the Town Charter lays out a very specific procedure for the submittal of petitions. The attorney received the validated petition on Friday, it was reviewed over the weekend, and the legal opinion was submitted on Monday. There are three methods to place a voter petition on the ballot; two are applicable to this petition. The first is to rescind a decision of the Council, but that type of petition must be submitted within 60 days of the decision. In this case, the decision in question was made in July 2016 so this petition would be legally invalid under that provision. The second is to amend an ordinance; in this case the language must include the text of the ordinance. Even if the petition was to request a repeal of an ordinance, the petitioners must be provided with the language that is intended to be repealed. In this case, this petition did not include the text of the ordinance. Based on the language submitted, it would be very difficult for either the attorney or the Council to determine which portion of the July 2016 amendments the petition intended to repeal. The law is clear on what the Council and attorney can and cannot do in regards with interpreting the language of the petition. If the question is ambiguous, the Charter directs the Council to not place it on the ballot. This doesn't prevent the Council from making other decisions regarding the issue; there is a lot of concern expressed with the petition and the Council is within its authority to establish a process to identify and address those concerns through the regular ordinance amendment process.

Chair Hemphill asked Ms. Dixon to address the Town's responsibility regarding the petition language.

Ms. Dixon said the protocol is standard across the board for towns in Maine; towns are allowed to provide the basic form of a petition but officials cannot advise a petitioner how to frame the question. The petition process is the purest form of democracy, where a citizen can put something on the ballot for other citizens to vote on without intervention, and that pathway should not be interfered with. Up until the signatures are validated, matters concerning the validity of the question itself are not relevant, and should not be relevant to the Town. The process is structured to place the burden on the petitioner.

Councilor Farber asked if there is a standard petition form statewide. Ms. Dixon said there is a standard form and Falmouth uses it.

Councilor King thought it would be helpful to include a comment sheet including a reference to the Town Charter to explain to a petitioner what the process is that they are going to undertake. Ms. Dixon said the Town can provide a copy of the Charter and can suggest that the petitioner consult with an attorney as part of the process.

Councilor Farber pointed out that the Charter is available on the website and is easy to access.

Councilor King wondered about instituting a policy regarding guidance to petitioners as discussed by the attorney. Councilor Farber said they could suggest it to staff.

Councilor Farber clarified that nothing is going to change in the near term with regards to the ordinance.

Councilor Kitchel felt the Council has been receptive to concerns from the public and made ordinance amendments in response to the two- and multi-family development projects. He thought a lot of the petition signatures took place during the discussions around the Tuscan Way development, and wondered whether those petitioners' concerns have since been addressed. The petition language is very vague. There is time for the petitioners to rewrite it and gather signatures in time for the November election.

Councilor Ferrante raised concerns about the ordinance at the last workplan meeting but at the time they didn't have enough experience with the ordinance. She wants to have some productive conversations about the ordinance.

Chair Hemphill said it is clear that this petition cannot be put on the ballot, but as part of the zoning amendment process the Council promises the public to periodically review the ordinances and revisit their impact. He proposed that the Council hold a public forum in July specific to questions and concerns about the July 2016 zoning amendments. He suggested a resolution at the next meeting to indicate willingness to schedule that public forum and start a dialogue about this issue.

Councilor Farber pointed out that it is hard to hold a forum in July when school is out. She also suggested mailing a notice to the petition signers and asking them to send their questions and concerns in advance.

Chair Hemphill felt the Town's ability to reach citizens with the website, social media, and ads in the newspaper is effective enough.

Councilor Farber said that many citizens have referred to this petition and contract zoning. She wanted everyone to know that the July 2016 amendments did not include contract zoning. That was a completely different amendment. She suggested that the Council include contract zoning in any discussions. She said they should outline the other items that were included in the July 2016 package; they all worked together.

Councilor Kitchel recommended that they go to public forum with an introduction regarding how they got to those amendments. Chair Hemphill agreed; they did 5 years of study including the Comp Plan. That time included multiple public forums.

Councilor Ferrante said she didn't want to have public forums without educating people first about what led up to it and what does it mean. She encouraged a dialogue format where the public could ask questions and get answers.

Councilor King felt there would be various components to their review; they will also need to review the building data to see what has happened in Town since the amendments were passed. The forum will be part of the review.

Councilor Farber agreed with Councilor Ferrante and said all the materials already exist from before.

Chair Hemphill said yesterday he and Town staff met with John Winslow, who instituted the petition, and discussed with him how to move forward. He was agreeable to the recommendations.

Chair Hemphill suggested they schedule a resolution for April 23 to plan a process moving forward. Councilor Farber pointed out that there would be an opportunity for public comment at that time.

Adjourn

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

Meeting adjourned 6:14 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary