

Town Council Meeting Minutes May 14, 2018

The meeting was called to order at 5:00 pm.

Roll Call

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

Councilors Farber and Svedlow arrived late.

Item 1 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 real estate rights, pursuant to 1 M.R.S.A. § 405 (6) (C).**

Councilor Kitchel moved the order, Councilor King seconded. Motion carried 4-0.

Councilor Farber arrived during the executive session.

Item 2 Orders to approve the FY19 School Department Budget as required by M.S.R.A. Title 20-A §1485, §1486, §2307.

Councilor Svedlow arrived at the meeting.

Councilor Farber moved the order. She and Chair Hemphill read the order into the record. Councilor Svedlow seconded.

Motion carried 6-0.

Item 3 Order to approve the FY19 Municipal and School Department Budgets in accordance with the Town of Falmouth Charter, Article 5, Sec 502.

Councilor Farber moved the order; Councilor Ferrante seconded. Motion carried 6-0.

Item 4 Order to approve the FY19 Budget Capital Improvement Plan and Tax Increment Financing District Plan.

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

Item 5 Order to approve the FY19 Sewer Department Enterprise Budget.

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

Item 6 Order to adopt new sewer service rates, effective beginning with the normal billing cycle occurring after July 1, 2018, to fund debt service for the Mill Creek Pump Station and Force Main Upgrade.

Councilor Farber asked about the current residential rate.

Town Manager Nathan Poore said this is a 3% increase over current rates.

Councilor King asked if the increase is due to specific improvements. Mr. Poore said there was a significant increase last year and 3% increases are scheduled for the next few years to fund essential infrastructure upgrades. There are capital improvements planned for the next 15 years. These increases are not for operations.

Chair Hemphill opened a public comment period.

Steve Dyer of Mountain Road thought the town should look at a more progressive rate schedule. The town is the only one that bases residential fee on 1000cu of usage. Most towns have a 200cu base and charge actual usage. It isn't fair to charge everyone the same amount without taking size of the home into account.

Public comment period closed.

Councilor Farber thought there was no way to meter individual usage. Mr. Poore said there is a full report that was done on that; they can meter water usage but there are complexities involved. He can put this on a future Council agenda for review.

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

Item 7 Order to set FY19 real and personal property tax due dates.

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

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

Item 8 Order to sign the June 12, 2018 Budget Validation Referendum and the Municipal Official Election warrant.

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

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

Item 9 Public Hearing and Order relative to a new license for the Cumberland Farmers' Market Association to establish a summer and winter market.

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

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

Item 10 Public forum on an amendment to Section 19-18 of the Code of Ordinances relative to the amount of open space required for conservation subdivisions.

Councilor Farber explained that for conservation subdivisions in rural areas the set aside for open space is currently 30%; it was originally 50%. While working on the comp plan update, LPAC recommended returning to the original 50% amount. The Council recently asked LPAC if this is still their recommendation, and LPAC confirmed that it is.

Chair Hemphill opened the public forum

Lisa Patterson of Field Road supported the ordinance amendment. The 30% level results in set aside of undesirable land, ravines and wetlands and such, and returning to the 50% level will increase the amount of usable open space.

Catherine Merrill Liberty of 100 Woodville Road has lived here all her life and spoke about the growth in the town in that time. Growth has been managed well. Development is natural in a desirable community. Increasing the set aside rule would reduce the number of homes she could develop on her 55-acre parcel and therefore its value. She said the difference in rules between districts creates iniquity. Farm & Forest zoning already restricts development in the rural area with the lot sizes required. She asked what costs and benefits the change in rules would have.

Chair Hemphill closed the public forum.

Councilor Farber said there is lenience provided on where houses are located to balance the open space set aside. The goal is not to restrict the number of dwelling units, but to place them in a manner that provides larger contiguous sections of open space. There are examples where density increased slightly as a result of the conservation zoning. It may reduce the lot sizes and will change where the buildings are located on the property.

Councilor King said surveys have shown that people in Falmouth value open space. She agreed that the different zones have different properties. The idea was to preserve the rural character with the zoning in the rural area. She didn't think tax value has been reduced by that zoning. The goal of the growth areas was to encourage growth in those areas served by infrastructure. They started out with 50% set aside town wide; it went to 30%, and now they are making an adjustment to 50% in the rural area.

Item 11 Ordinance to amend Section 19-18 of the Code of Ordinances relative to the amount of open space required for conservation subdivisions.

Councilor Farber moved the ordinance; Councilor Kitchel seconded. Motion carried 4-2 (Ferrante, Svedlow opposed).

Item 12 Ordinance to amend Section 19-124 of the Code of Ordinances relative to expanding abutter notification requirements for certain applications to the Board of Zoning Appeals

Councilor Svedlow said the committee reviewed all abutter notifications town-wide, and are recommending this one change.

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

Item 13 Workshop on the draft contract zone agreement for Homestead Farm LLC and Turning Point Development LLC.

Councilor Ferrante was recused from this item.

Councilor Farber moved to suspend Council rules to allow public comment specific to the changes made to the document since the public hearing and limited to 3 minutes per person; Chair Hemphill seconded. Motion carried 5-0.

Owens McCullough of Sebago Technics, representing the applicant, gave a presentation on zoning changes in the area due to the comp plan and on the project's history. He said the developer is willing to reduce the entry level houses to 20 and remove the request for growth cap exemptions. He showed several alternate designs of what the development might look like without the contract zone; these would be condominium developments. He showed a video fly-through rendering of what the development might look like once it is built. They are not asking to increase density over what would be allowed in the current zone. They are asking for reduced lot widths and setbacks to allow flexibility in the design to maximize the open space and public use areas. This development will facilitate the expansion of natural gas into this area. The developer has offered to pay \$1300 per unit to the Town in impact fees, even though he is not required to do so. There will be an invasive species mitigation plan.

Councilor Farber asked about a reduction from the growth cap.

Mr. McCullough said the current proposal had 32 entry level houses that would be exempt from the growth cap. He is now proposing 20 entry level homes without exemptions.

Councilor Farber asked about the allowable density; Mr. McCullough said the density calculation on the property would allow for 153 units. The other proposals they showed contemplated condo development. This would eliminate the need for lot widths, since there would not be individual lots. It would be all one lot

under a residential planned development. The proposals shown would be all duplexes or triplexes, include 153 units, and would be allowable under the current VMU zoning. This isn't the direction they would like to go and it would remove the opportunity to create single family housing, integrate open space and an active playground, and connect the roadways to create a neighborhood feel. In the contract zone proposal, they need lots that range from 50-70 feet wide to allow flexibility on how they design the lots.

Natalie Burns of Jensen Baird Gardner & Henry, representing the applicant, discussed the changes that were made since the version of the agreement that was submitted for public hearing. They added clarification that the Planning Board would approve lot boundaries as part of their review; clarified the list of items that would require the Council to approve an amendment of the agreement; changed the term "entry level housing" to "Entry level, single-family detached dwelling", changed the allowable number of dwellings in each phase of development area 1, extended the term of the deed restriction from 3 to 5 years, reduced the maximum number of dwelling from 151 to 139: 123 in area 1, 6 in area 2, and 10 in area 3; clarified that the Town would be granted an easement for public access to and use of the open space; clarified the number and location of street trees, specified the wastewater connection fee and the acceptance of wastewater from the development, clarified the architectural style, established objectives for the Planning Board in its review of the architecture and landscaping; established design guidelines for single and two-family dwellings; clarified that the left-turn lane from Route 100 has not yet been approved and will be at the cost of the developer; clarified that the sewers will be constructed in accordance with the ordinance; eliminated the 55+ exemption, limited the maximum number of building permits to 35/year, and limited the maximum number of exemptions to 10. If the number of entry-level houses is reduced to 20, the developer has stated that the number of exemptions will be removed entirely. Finally, the agreement requires the developer to submit the entire development to the Planning Board for subdivision review at one time. Phasing that impacts street connectivity would not be allowed.

Councilor Farber wanted to make sure that the agreement provides perimeters to the project but also allows the Planning Board to do their review as normal.

Ms. Stearns said some of the changes that have been made to the agreement were staff recommendations and were incorporated as suggested. Those changes were made to clarify and empathize the authority of the Planning Board.

Councilor Farber asked about the roundabout. Ms. Stearns said it is now optional and that is clear in the exhibit.

Councilor Farber asked if it would be clear to the Planning Board that they could eliminate it if they felt it was warranted. Ms. Stearns said the ordinance give the Board broad authority in locating points of egress. At their hearing, the Planning Board called out whether they would need a more in-depth traffic analysis. That would be within their authority. The one place in the agreement where the Board is bound is in preserving the connectivity of the streets. They are not bound to the connection to Mountain Road. She felt the Board would take the concept plan to heart, but if there is a safety or fundamental design issue, they would feel empowered to approve a different configuration.

Chair Hemphill asked about the proposed reduction in entry level units.

David Chase, developer, said this wouldn't impact the timing but might increase the time for build-out. The price point on the entry-level is certainly attractive and isn't available in Town. It would be easy to sell those quickly, though they are limited to 15 per phase. He felt this proposal would make the project less controversial. He would rather build individual homes on individual lots, but he could move forward with the residential planned development with the condo units. Eliminating the request for exemptions means that his request at this point is for the reduction in lot widths. The other elements in the agreement he could negotiate at the Planning Board level. In response to Councilor Svedlow, Mr. Chase said he would like to keep the entry-level homes as a public benefit.

Councilor Svedlow asked if he would be willing to leave the entry-level homes at 32 but eliminate the exemptions; Mr. Chase said he would rather not. If he is willing to remove the request to exemption, he would like to be at 20 due to the cost point of those homes.

Councilor Farber asked about the adjustment to the restriction on the entry-level homes from 3 years to 5 years. She wondered what the “sales cost incurred” means. Mr. Chase explained that if someone had to sell the house due to a life-change event, they would have to pay broker fees, etc. to sell it. This language was a way to avoid them having to sell it at a loss. They will be deed restricted.

Councilor Farber wondered how they track that. Ms. Stearns said they could review it on the closing statement.

Ms. Stearns said there are two easements over the property and there needs to be a legal opinion that those would allow the development; if they constrict or restrict the development there would be a need for a partial or full release of easement rights. Those should be resolved prior to execution of the agreement. She requested clarification that mixed-use would be allowed within the commercial buildings in areas 2 and 3. She said the Council requested architectural guidelines based on *The Great American Neighborhood* and asked if the Council was satisfied with the plans submitted. She said an effective date of the agreement should be added that is beyond the appeal period.

Mr. Poore said the Town’s attorneys have reviewed the effective date suggestion and said it is not an option. The effective date of the agreement is the date it is approved by the Council. Ms. Burns agreed; anything the developer does during the appeal period is at his risk. That is always the case.

Ms. Stearns said the applicant submitted 15 building plans; they recommend only including those that meet the design guidelines or amending the others so that they meet the guidelines. She requested that staff receive the final version of the agreement at least one week prior to the scheduled vote.

Mr. Chase said the only feedback he needs from the Council is on the number of entry-level homes and the exemptions.

Chair Hemphill asked about the wetland impacts and potential for mitigation. Councilor Farber said she had asked for clarification on how much impact there would be and whether it was under what was allowable by right. The developer indicated that it would be about 4000 sf and is within what they are allowed by right.

Councilor Farber asked if the wetland impacts would need to be approved by DEP and Army Corps and whether the Town would be notified. Ms. Stearns said the Town would know through the Planning Board the exact amount of wetland disturbance before the plan is approved. It would be a factor in the Planning Board deliberations.

Chair Hemphill asked about the VMU zoning; he said this zoning has been in existence for 30 years. Ms. Stearns said that is correct; the ordinance was adopted in 1988 and the dimensional requirements have not changed since then. The options shown tonight have been permitted in VMU all along.

Councilor Kitchel stated that he was happy to accept 20 entry level homes and remove the exemptions.

Councilor King said that, while the exemptions seemed to favor the provision of entry-level and 55+ housing, removing them allows the Council to act responsibility with regards to the growth cap. Even though this results in a reduction of entry-level housing, she supported the removal of exemptions.

Councilor Farber agreed. They have heard a lot from the public and other developers about the growth cap.

Chair Hemphill agreed. He said Falmouth really need entry-level housing, but agreed with the statements about the exemptions.

Chair Hemphill opened a public comment period.

John Winslow of Gray Road spoke with Mr. Chase earlier this week. He opposed contract zoning. They can achieve the desired density under the current zoning. He supported reducing the width to 100 feet instead of 50 and doing a mix of single family and duplexes. Contract zoning circumvents what he thought would

happen with the Route 100 committee; he thought the committee was going to draft a master plan. Contract zoning would open Pandora's box for other areas in Town.

Steve Dyer of Mountain Road opposed the development. He said this is still too big at 139 units. Moving the lot width from 150 feet to 50 is a 300% reduction. This is not an urban area; VMU is 422 acres total with 122 homes. There should be big benefits to the Town with a contract zone; this doesn't have those benefits.

Barbara Just of Lowell Farm Road said this is too much density on a small area. She spoke about her concerns with traffic. She asked how the reduction of entry level houses impacts all three phases.

Scott Walker of Gray Road asked the Council to impose restrictions on when the developer can pull building permits from 6-months before the start of construction to 30 days. He asked how the developer will prioritize what homes get built; he thought full price homes would get built before entry-level homes.

Scott Hotham, representing his parents who live on Mountain Road, said his family has owned the land since the 1960's. It was always part of the long-range plan that this was part of the family estate. They have been approached dozens of times about developing the land. The last plan was developed as a partnership between his family and Mr. Chase. He and his parents are proud of the plan. This is their legacy. They are not taking this lightly. They feel it will be a benefit to the Town. They have the opportunity to do this right and they feel they have put in the time and money to do this right.

Julie Porter of Mountain Road hoped the road would be moved away from her home. The residents of the neighborhood like it the way it is and are not interested in seeing increased traffic, environmental impacts, and new homes obstructing their view. This will make it unpleasant for them to live there.

Matt Wollcott of Hardy Road said they moved here for the schools. If half of the 139 units have 2 children, they would see an additional 140 children in the school. The school enrollment study projected 300 new students over 10 years. He thought the study was misguided and this development would put a big dent in the projections of that study.

Keith Noyes of Gray Road asked what public benefit exists in the contract zone that wouldn't under the current VMU zoning.

John Lane of Falmouth Road said that Harmon's is not an urban area and more business there would not benefit the town. He opposed the development. He didn't see anyone who supported this project at any of the Council meetings except for those who financially benefit or who wanted to move to town. This isn't what Falmouth is about.

Linda Dyer of Mountain Road reviewed the goals of the VMU district. She felt the development was not in keeping with the character of the district. She argued that this area is identified in the comp area as a commercial growth area. She opposed the development.

Rebecca Jaynes of Mountain Road opposed the development. She argued that the density of the project is too large; reducing it to 139 is not enough. She felt the Council was not representing the people of Falmouth. She wanted the number of units reduced.

Chair Hemphill closed the public comment period.

Councilor Farber asked how the number of entry level homes would be enforced. Ms. Stearns said the Community Development Department will have to track the building permits that are issued and which category each falls into. There will have to be some follow-up mechanism on the sale price of the home.

Councilor Farber asked how the Town would enforce this. Ms. Stearns said failure to comply would be a breach of contract and they would need to mediate it.

Councilor Farber asked how much would be built in any given year across the phases. Mr. Chase said it has been agreed that the permits will be per calendar year. Generally, there are no more than 35 permits per calendar year, and there are only so many lots per phase.

Councilor King asked about the suggestion to change the amount of time between when a permit is issued and when construction begins on a home. She wondered if this is something that they could do.

Ms. Stearns said according to current practice once a permit is pulled construction should begin within 6 months and be substantially completed within 2 years. Permits can be renewed indefinitely. If it were to be revoked, he could reapply. A permit cannot be pulled without a complete building application. Growth permits are not issued until the building permit is ready to be issued. There are developers all over town that have lots of similar housing types that they are building; they can submit several plans at one time. The building permit submittal, review and approval process is fair across the board and everyone is treated the same. In response to Councilor Kitchel, she said the building permit is separate from a growth permit. There is some development, commercial buildings for example, that are not subject to growth permits.

Councilor Farber asked if the Town reached the cap of 65 in 2017; Ms. Stearns said no, she thought it was around 48. She thought the last time they reached the cap was in 2015 but it took all year to reach it.

Chair Hemphill said the public has suggested that the Council has the authority to limit the number of units on this property. He said the Council's role is to review and assess the proposal that is presented to them. He asked the applicant why the number of units is where it is at this point.

Mr. Chase said, with the amount of approvals, the whole process, the construction etc, he needs this many units to make this project work. If there were a question from the Council on reducing the number, he couldn't do it financially. They are down to 139 from 153 and he didn't think they would even build 139. He said there is no way he will be approved in 2018; the DEP application alone is a 6-month process.

The Council will consider an order on this item at its May 30 meeting.

Item 14 Order to accept Garden Way as a public street.

Councilor Svedlow was concerned with the connectivity; this is a cul-de-sac.

Jay Reynolds, Public Works Director, said the Council heard a presentation on this application at their March 12 meeting. Since that time, the applicant has fulfilled all the submittal requirements in accordance with the street acceptance ordinance. The proposal includes acceptance of the roadway, drainage easements, and open space. There would be two easements granted back to the homeowners' association as part of this agreement.

Councilor Farber said there is a public trail from Charlotte Drive through open space and connects to the Portland trail system. There is another trail off LedgeWood. This would allow the public to park on Garden Way and access the open space.

Councilor Svedlow didn't oppose this per se, but wondered why this one as opposed to other cul-de-sacs.

Councilor Farber wondered if the connectivity policy should be reviewed. She said they are being asked to accept these streets not on vehicular connectivity, but on pedestrian connectivity. There are good reasons to have open space access on smaller, quieter streets. The policy speaks to vehicular connectivity.

Councilor King didn't think all streets are created equal and they are asked to use their best judgement. Accepting streets is a cost to the municipality and it is a judgement call. This is a short road, an easy plow route, and people use the trails.

Chair Hemphill didn't support accepting this street. There are numerous public access points and connectivity in this area already. The connectivity policy is clearly vehicular; they are looking for neighborhoods to connect to each other. He didn't see any exceptional value to the town of connectivity here. He spoke about the cost to the town.

Councilor Ferrante agreed that the policy should be reviewed. She said the residents here pay the same property taxes as everyone else. She lives on a private road and understands the challenges.

Councilor King asked if Chair Hemphill's argument is that there is sufficient public access and availability for parking on Charlotte Drive. Chair Hemphill said that was correct.

Councilor Svedlow asked if there was sewer on this road; several residents in the audience said no, there is public water.

Chair Hemphill opened a public comment period.

Peter Biegel, representing the applicant, said when the development was created, there was no opportunity for vehicular connectivity; Charlotte Drive was already built out and they are bordered by the CMP right of way and wetlands on the other sides. As a result, they decided to focus on pedestrian connectivity and make extra efforts to connect that way. They retained Gary Fogg to build the trails, and made efforts to connect to the dog park in Portland.

Hope Cahan of Surrey Lane asked that the Council do some kind of public notification if they accept it so the public is aware.

Amy Tarbox of Garden Way said in the past 4 years she has seen one or two cars park and use that trail entrance. Most of the people who use it are abutting property owners that walk there. She said there are no problems with utility or delivery trucks on the road and there is plenty of room for the snow. She is a realtor and worked with the developer during design; they made sure the road was developed in such a way that it would be accepted in the future.

Adam Higgins of Garden Way said the public could park on Ledgewood to access the trails, but it would be safer to park on Garden. People use the trails a lot.

Mike Kern of Ledgewood Drive, whose house is a part of the development, supported accepting the street. If the town takes it over it would be less maintenance since it doesn't have a lot of traffic.

Scott Derrig of Garden Way said the homeowners made sure everything was done so that the road could be accepted by the town. He said the cost of the road would be \$4300/year; far less than the taxes they pay.

Sally Williams of Garden Way felt it would be good to accept it and let the other residents of Falmouth know that they have access to it.

Public comment period closed.

Councilor King said vehicular connectivity is important to a town for a number of reasons, but trail, bike and pedestrian connections are mentioned in the policy. There is a long list of streets that would like to become public streets. Every street is different.

Councilor Farber pointed out that previous streets that applied had exemptions from the street standards.

Councilor Farber moved the order; Councilor Svedlow seconded. Motion carried 5-1 (Hemphill).

The Council will add review this policy to the workplan.

Item 15 Ordinance to amend the Code of Ordinances Div. II-2-3-12. *Economic Improvement Committee* to update the charge of the Falmouth Economic Improvement Committee (FEIC).

Councilor Ferrante said the FEIC discussed the suggested changes the Council made at the last meeting and clarified the language.

Councilor Svedlow moved the ordinance; Councilor Kitchel seconded.

Councilor Farber moved to amend the ordinance as follows: 2. *Provide advisory assistance to ~~Town staff and the Town Council~~ on economic development matters, including, but not limited to, ~~policy~~ policies and ordinances ~~development~~, strategic planning, business attraction, and land use.* Councilor Svedlow seconded.

Motion carried 6-0.

Amended ordinance carried 6-0.

Item 16 Order to authorize the Town Manger to execute a Property Disposition and Easement Agreement for real estate at Tax-Map U18-023.

Mr. Poore explained that Underwood is a public road that transitions to a paper street. It ends in a gorge that reaches 25 feet deep in places. There is a public drainage pipe and outfall in that gorge that drains a massive drainage area. In high rainfall situations, it supercharges the system and shoots out a massive amount of water creating an erosion issue. The Town has incipient rights in the paper street, but the project required grading work etc. outside the public property. This impacts property owned by Edwards, Zimmerman and Libby. The Zimmerman lot was subject to a foreclosure for unpaid taxes. There was an agreement to sell it back to the owner for \$2000 in back taxes, but the agreement was never finalized. Since then there was a major rain event that created a lot of erosion and the town began work on engineering and the property rights. There is now an interested buyer for both the Edwards and Zimmerman properties who has agreed to settle the taxes for \$3000 and also grant the Town easements on both lots. The Town is currently working with an appraiser to identify what the damages would be for the rights for the small amount of the Libby property that is still needed for the project.

Lisa Magnacca of Drummond Woodsum, Town Attorney, said the order also includes a waiver of the town rule requiring a bidding process prior to disposing of land.

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

Councilor Kitchel moved the order; Councilor Farber seconded. Motion carried 6-0.

Item 17 Ordinance to amend Section 8-16 of the Code of Ordinances to extend the moratorium on retail marijuana establishments and retail marijuana social clubs for 180 days.

Councilor Farber moved the ordinance; Councilor Kitchel seconded. Motion carried 5-0 (Kitchel absent).

Item 18 Introduction of amendments to the Code of Ordinances, Chapter 8, regarding temporary signs.

Councilor Farber said the CDC made some adjustments based on the presentation they made to the Council last month.

A public hearing was scheduled for July 9.

Item 19 Introduction of amendments to the Code of Ordinances, Chapter 8, relative to food service establishments.

Councilor Svedlow said ordinance committee has done a lot of work on this amendment.

A public hearing was scheduled for July 9.

Adjourn

Councilor Kitchel moved to adjourn; Councilor Svedlow seconded. Motion carried 6-0.

The meeting adjourned at 10:43 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary