

Town Council Meeting Special Meeting and Workshop
May 11, 2009
DRAFT Minutes

The meeting opened at 7:00 pm

Roll Call

Councilors Breen, Payne, Rodden, Wroblecki, Armitage, Pierce, and Libby were present and answering roll call

Item 1 Order to go into Executive Session to discuss a hardship abatement of taxes pursuant to 36 M.R.S.A. 841(2) (E).

The Executive Session was postponed until May 26, 2009

Item 2 Public Hearing and order to renew food service/victualer's license and liquor license for Bernie's Place, Falmouth Country Club, Falmouth Sea Grill, Lotus Chinese & Japanese Restaurant.

Chair Armitage opened the public hearing. There was no public comment.

Chair Armitage closed the public hearing.

Councilor Libby moved to approve the order; Councilor Pierce seconded. Motion carried 7-0.

Item 3 Public Hearing on amendments to the Falmouth Zoning Ordinance pertaining to Shoreland Zoning, as proposed by the LPAC.

Councilor Armitage opened the public hearing.

There was no public comment.

Councilor Armitage closed the hearing.

The order will be on the May 26 agenda.

Item 4 Public Hearing on an amendment to the Zoning and Site Plan Review Ordinance to address the types and numbers of temporary signs permitted for new or relocated businesses.

Councilor Armitage opened the public hearing.

There was no public comment.

Councilor Armitage closed the hearing.

The order will be on the May 26 agenda.

Item 5 Public Hearing on an amendment to the Coastal Waters Ordinance as proposed by the Harbor Committee.

Councilor Armitage opened the public hearing.

There was no public comment.

Councilor Armitage closed the hearing.

The order will be on the May 26 agenda.

Item 6 Introduction and Public Hearing on the Woods Road Workforce Housing Project.

Councilor Armitage opened the public hearing

Town Manager Nathan Poore discussed the agreement that he and staff Theo Holtwijk Town Attorney Bill Plouffe drafted and presented to Developers Collaborative. Developers Collaborative have responded with some changes. Poore explained the changes are not substantive and recommends the changes be reviewed and placed on the agenda before the order and allow a public hearing.

Dan Maloney, 136 Woodlands Drive, stated he has been a resident since 1998 and did not support the plan. Mr. Maloney expressed it was a luxury and an extravagance, and he would prefer to see the Town Focus on necessities. He agreed with the article Councilor Payne wrote for the May 6 Forecaster stating the Town has a lot of other obligations and he was not convinced that the Town had a need for Workforce Housing.

Scott Durepo, resident of 112 Woods Road, moved here two and a half years ago with his wife from Massachusetts to get away from projects like Workforce Housing. He likes the quality of Woods Road and loves the Town. He remarked that every person who works in Falmouth should have the opportunity to live in Falmouth, but they should take it upon themselves to buy themselves a piece of land and build themselves a house or buy one of the twenty properties that are currently for sale for under \$250,000. Mr. Durepo stated that he did not think it makes sense to add more housing units when the economy is in a recession and what may happen if the homes don't sell. He is concerned for the community and his family.

Vince Herzog, 104 Woods Road, lives across from the proposed development. He attended the meeting last year and is very opposed to the project and thinks it is a flawed concept. He offers zero support of the plan.

Marcia Marshall, 100 Woods Road, was very concerned about the traffic problems that already exist on Woods Road and the possibility of it being worse with more housing. Ms. Marshall almost been hit walking across the street as cars fly down over the hill.

Although the police station is there, they do not do anything about it. Ms Marshall questions who is going to buy these homes when there are no jobs and no income and no insurance. Ms. Marshall believes that a few years down the road these homes will become rental units. Her own home is for sale and she can't sell it.

Bill Gardiner, 45 Underwood Road, stated he had seven questions that he wanted to have answered.

- 1.) Why is the seller of the property, which is the Town paying for the normal due diligence, the obligations incurred by the invested developer as which is virtually always the case in a for-profit venture. Ordinarily, whether the project is the purchase of a company or residential or commercial building or vacant piece of land to be improved and sold for profit by the builder developer, the buyer or the investor developer typically assumes the costs to determine if the investment to complete the project makes sense to the developer. You the Council are not asking the developer to do this on a pro-bono or minimal fee basis, this is not a non-profit, the developer intends to make a profit, which he will not earn unless he invests in the project. The developer won't go forward if he can't make the numbers work.
- 2.) Who is Deep Cove? Everything has been Developers Collaborative and Maine State Builders. There are reasons why entities are established.
- 3.) In the second paragraph in the opening section the phrase "Has been selected to design and complete". Sounds like this is a done deal. I suggest that phrase should be reworded to avoid a problem later.
- 4.) In section one, the outline of the developer's obligation states a deadline of December 31, 2009. During that time is it likely that other dollars will need to be spent by the Town for additional consulting or studies to determine the feasibility financial or otherwise. If other studies are not needed, the Council is essentially stating that the only significant items of concerns are those listed in the agreement.
- 5.) The phrase in good faith appears a few times. How liable would the Town be if, for example, the developer said the Town did not re-zone the property as requested or the study of the obvious difficulty of developing this piece of ground becomes more problematic due to resource protection guidelines that are yet to be drawn. Is the Town obligated to spend more money to act in good faith due to problems created by actions or lack of actions by the Town? The Planning Board has some jurisdiction and input here when it comes to wastewater and road widths and etc. They are not a party to this agreement and have not signed off on any anticipated requests.
- 6.) Section four discusses that the work related to this agreement for studying of various aspects of the project will be open book. Does that mean open book to the public?
- 7.) In the final section, why is the word negotiate needed? What is being negotiated? Is this not a definitive and complete description of the required work? That will provide answers to the real costs and therefore the subsidy anticipated by the Town or as mentioned above regarding good faith, is there more to come that will suck more dollars from the Town to act in good faith and negotiate in good faith.

Councilor Armitage informed the public that he would not close the public hearing, there would be a continuance for the public hearing on May 26 it was possible there may be changes to the agreement.

Town Manager Nathan Poore spoke of the format and approach of the agreement. Poore explained that when he and Theo Holtwijk began to work, they made every attempt to draft the full agreement. They brought the document to the Town's attorney Bill Plouffe, and it was decided for this phase of the agreement it did not make sense to have the legal fees associated with the extensive legal work and fine tuning of the document during the preliminary first phase of the draft. That was why this was brought down to a fairly simple three page agreement. It does not obligate the Town to take it any further than the market study, the engineering and the natural resource analysis. Poore stated the end date of December 31 was discussed earlier in the day and is not anticipated to take that long, hopefully it can be completed by the end of October.

Councilor Armitage asked for clarification on Deep Cove.

The representatives Developers Collaborative clarified that Developers Collaborative was not an entity, but a group of like minded developers, a DBA for developers. Developers Collaborative sets up special entities for each one of its projects. Deep Cove 2 consists of Jim Hatch, Richard Berman, and Kevin Bunker. Deep Cove 2 is being used because without proceeding further they do not know if they need to set up a special entity for this project.

Councilor Wrobleski clarified that the Planning Board would not be involved at this phase of the project. Councilor Wrobleski stated he understood that at this point the Council would be voting for an agreement for the parameters of the project that has been described over a period of a couple of meetings.

Councilor Breen stated she had concerns over some aspects of the project and explained there needed to be hard data to support the proposal. More preliminary information will need to be gathered on the proposed site design, natural resource questions and the market and feasibility study, including the real costs and benefits. Councilor Breen stated she had concerns over some aspects of the project

Councilor Wrobleski raised his concerns for voting for the agreement: sustaining the affordability of the single family units, the Town bonding the cost of the infrastructure.

Councilor Payne explained his understanding is that the Council is taking incremental steps to keep the process moving.

Councilor Rodden expressed she sees the agreement as an indication that they were going to proceed.

Councilor Pierce would like a definite site and to finish the natural resources and market study.

Councilor Libby stated that the outcome of three major issues natural resource; ledge removal and infrastructure costs and market analysis have the possibility of being a deal breaker. Councilor Libby said this is ink to the paper to determine those three issues.

Councilor Armitage agreed that this is an incremental step in the process.

Councilor Rodden asked why the natural resource had to be part of the agreement and if staff could complete this task?

Poore clarified that it was a part of the packet in a prior Council meeting and it was carried through as part of the agreement.

Councilor Wrobleski stated LPAC was reviewing the draft and at the last meeting.

Councilor Pierce inquired about the feasibility of exploring the options for using the site near exit 10.

Councilor Armitage asked for Town Manager Poore to tighten up the language in the agreement and be more specific to the two steps that need to be taken then come before the Council at the next meeting to vote. Councilor Armitage also directed Poore to have staff gather information and approach the City of Portland concerning the land near exit 10.

Councilor Libby requested a short recess. The Councilors resumed their meeting at 8:27.

Item 7 Order to adopt a resolution on the Pleasant Hill Fire Station.

Councilor Wrobleski moved to take the motion off the table for discussion. Councilor Rodden seconded. Motion carried 6 ayes 1 nays (Councilor Payne)

Councilor Wrobleski motioned to adopt the resolution; Councilor Pierce seconded.

Councilor Armitage asked if Chief Rice should explain his memo The Council decided it was not necessary.

Councilor Wrobleski moved to amend his resolution and motion as follows; to delete the final whereas that refers to the modest expenditure and in the final paragraph amend it to read as "Now therefore be it resolved and ordered by the Falmouth Town Council assembled this 11th day of May, 2009, that the Town Manager will maintain the Pleasant Hill Fire Station to be used as a storage for reserve fire engine/pumper truck for the fiscal year 2009-2010. The Town Manager will report to the Council no later than November 10, 2009, on the effect of any changes made to the Town's delivery of fire protection and emergency medical assistance.

Councilor Wrobleski withdrew his first amendment and motioned to amend his resolution as follows; to delete the final whereas that refers to the modest expenditure and in the final paragraph amend it to read as " Now therefore be it resolved and ordered by the

Falmouth Town Council assembled this 11th day of May, 2009, that the Town Manager will maintain the Pleasant Hill Fire Station to be used as cold storage for reserve fire engine/pumper truck until October 31, 2009. The Town Manager will report to the Council no later than November 10, 2009, on the effect of any changes made to the Town's delivery of fire protection and emergency medical assistance. Councilor Pierce seconded.

Councilor Armitage asked the Council to vote on the amended amendment, motion carried 5 ayes Councilors Rodden, Wroblewski, Armitage, Pierce and Libby, 2 nays Councilors Breen and Payne.

Councilor Armitage asked for a vote on the motion, motion carried 5 ayes Councilors Rodden, Wroblewski, Armitage, Pierce and Libby, 2 nays Councilors Breen and Payne.

Item 8 Presentation regarding the Village Ice Rink Proposal.

Andy Hyland, Charlie Hurdman and Hugh Coxe discussed the Village Ice Proposal with the Council.

Faith Varney, Chair of the Parks and Community Program Advisory Committee, spoke of the concerns with losing the spontaneous recreation and wanted Falmouth teams having priority for use. The Committee would like to know how the Council feels.

Councilor Armitage explained that the Council was on board in a conceptual way. They are not opposed to the plan until the detail are finalized. Councilor Armitage suggested continuing working with PACPAC to get the answers.

Item 9 Presentation by Robert McDaniel regarding request for removal of restrictions placed on 106 Sunset Road by the Council.

Councilor Libby advised the Council that Robert McDaniel is a subcontractor that he worked with in the past. Councilor Libby also stated that he had informed Chair Armitage before the meeting about this relationship. Councilor Libby also stated that Mr. McDaniel had discussed the problem with him and he had a meeting with Community Development Director Amanda Stearns, Code Enforcement Officer Al Farris, and Town Manager Nathan Poore.

Poore stated that this was a misplaced dwelling that was discovered back in 1997. Today, there is a request to remove the restrictions. He said that if they choose to allow this then the back property taxes should be researched. There was an abatement done because this could not be used as residential. Poore stated that this was a change for the original agreement/settlement agreement.

Councilor Libby suggested to remove the back lot restriction, and possibly appear before the missed placed dwelling. Mr. McDaniel's should pay any expense the Town would incur in making this happen including staff time, and recording of deeds. Paying these charges could be his penalty. Councilor Libby stated he did not agree with charging for the back taxes.

Poore said that by removing the restrictions then there is added value of \$160,000.00 to the property.

Councilor Wrobleski asked what the plans are now for the unit over the garage?

Mr. McDaniel's stated that there may be family room or in-law suite.

Amanda Stearns stated that it could be used as living space as long as it was not used as a dwelling unit. There is no boundary survey right now, concerns with the garage not meeting setbacks.

Councilor Armitage requested more information such as a boundary survey before going any further with a new agreement.

Item 10 Discussion about an option to build 5 "on-street" parking spaces with a sidewalk, located near Underwood Park on Foreside Road.

The Councilors, Town Manager Nathan Poore, Police Chief Ed Tolan and Interim Public Works Director Jay Reynolds discussed the options.

Councilor Breen proposed to use gravel instead of pavement.

Councilor Pierce asked if it would affect the bike path?

Councilor Wrobleski asked not do something hasty. He was not convinced the spots will be used.

Councilor Rodden said she does not like the idea of using this as parking spaces. She has concerns about the narrow bike paths and the walkers. Councilor Rodden worried about the possibility of making residents mad.

Councilor Payne does like the idea of the beginning of the sidewalk and it keeps the people off of the shoulder. This is an appropriate solution.

Councilor Breen said her friends on Johnson Road do not like sidewalks, the material and the location. She does not feel comfortable about putting in 50 feet of asphalt as a solution. She suggested using curb stops.

Town Manager Nathan Poore said the reason they put the sidewalk into the plan was they thought it would look better. They need the spaces there. There hasn't been a decision on the Harbor Study.

Councilor Pierce asked to do something temporary.

Chief Tolan clarified the spaces would be parallel, no backing into route 88.

Councilor Pierce suggested making this as temporary as possible.

Councilor Armitage suggested making the Brown property gravel and make it temporary parking. For now don't put sidewalks in and make it as informal as possible.

Town Manager Nathan Poore clarified that they would put in some temporary gravel impervious material as informal as possible to blend into the landscape.

Councilor Rodden left the meeting.

Item 11 Order to adopt an amendment to Chapter 6, Article 6, Section 6.68, Appendix B of the Falmouth Town Ordinance that will

change maximum levels of income and expenses for the General Assistance program.

Councilor Libby moved to approve the order; Councilor Breen seconded. Motion carried 6-0 Councilor

Item 12 Order to appoint two delegates to the Greater Portland Council of Governments (GPCOG) General Assembly Annual Meeting.

Councilor Rodden returned to the meeting.

Councilor Libby moved to appoint one delegate, Councilor Breen, to the Greater Portland Council of Governments (GPCOG) General Assembly Annual Meeting. Councilor Armitage seconded. Motion carried 7-0.

Item 13 Order to change the Town Council regular May meeting date to Tuesday, May 26, 2009.

Councilor Breen moved to approve the order; Councilor Pierce seconded. Motion carried 7-0

Order to combine the June 22, 2009 Town Council regular meeting with the annual Town Council Organization meeting on June 15, 2009, and to cancel the June 8, 2009, Town Council workshop and special meeting.

Councilor Breen moved to approve the order; Councilor Wroblewski seconded motion carried 7-0. Councilor Wroblewski confirmed a 6:00 pm start time on June 15.

Item 14 Discussion about the annual Council Retreat. (Workshop)

The Councilors decided to schedule the Council Retreat on Friday, July 31, 2009, from 9:00 am until 2:00 pm. Town Manager Nathan Poore suggested using facilitator Karen Hinchliffe because she has conducted the last three retreats.

Item 15 Discussion about future Council Agendas. (Workshop)

The Councilors discussed upcoming agendas.

Councilor Libby suggested a review of the Town Assessor on June 15 because of upcoming Charter changes.

Adjourn

Councilor Breen motioned to adjourn, Councilor Pierce seconded. Meeting adjourned at 11:13 pm

Respectfully submitted,

Ellen Planer,
Town Clerk

DRAFT