

DrummondWoodsum

MEMO

TO: Nathan Poore

FROM: William L. Plouffe DATE: April 10, 2009

SUBJECT: Overview of the Hat Trick Drive Project and Agreements

You have asked me to summarize for the Town Council and you the key elements of the Hat Trick Drive project and the Agreements which the Council is being asked to authorize in order to move the project to completion.

The Hat Trick Drive project has been in the negotiation and planning stages for a few years. It began when the Town approached Wal*Mart about possible violations of the outdoor display provisions of the Zoning Ordinance, especially near the garden center area of the store. This led to a discussion of establishing a roadway behind Wal*Mart in conjunction with Wal*Mart's plans to reconfigure and expand its garden center and loading area. Wal*Mart eventually decided not to pursue its new garden center plans. However, it agreed to continue participation in the Hat Trick Drive project.

The project is designed to establish a public way, i.e., a road, from Depot Road; past property owned by J.E.P., LLC (location of Black Cherry Provisions); onto property owned by Falmouth Plaza, LLC; past the Town's parking area for the outdoor basketball courts and ice rink; behind Regal Cinemas and Wal*Mart; past Family Ice; onto property owned by the Town; and ending at Clearwater Drive. The vast majority of the way is an easement for travel by the public over privately owned land (J.E.P and Falmouth Plaza). (Jay Reynolds has plans showing the exact location of the way.) It is possible to travel this route today but is not built to appropriate standards for a public way and it is not intended for through travel.

The project is a joint financial undertaking of Wal*Mart, Falmouth Plaza, LLC, owner of the shopping center, and the Town of Falmouth. Other parties involved by way of consents but not financially, are Family Ice and J.E.P., LLC. Wal*Mart has funded the design, engineering, permitting and development of bid specifications. The construction project has been put out to bid and the parties are prepared to award the contract to the lowest responsible bidder, David Chase of Falmouth. The bid amount was \$282,850. In addition to the Chase contract costs, the parties will be obligated to pay \$50,000 to Central Maine Power for facilities upgrades and power line work. There may be extra costs associated with some of the changes necessitated by post-bid changes and we have estimated that at \$50,000. The total cost may be in the area of \$380,000. The parties have also agreed that they will have a 10% contingency, which they can spend if necessary upon agreement of the parties. Total costs will be shared equally, i.e., 1/3 each, i.e., Wal*Mart, Falmouth Plaza, LLC and the Town. It is worth noting that the costs are significantly below estimates obtained before the current economic downturn took hold on the construction industry.

The documents which form the “deal” are attached to the Order which has been presented to the Council. I shall briefly explain each of these.

1. Public-Private Limited Development Agreement.

This is the central document for the deal. It establishes the project cost and the 1/3 each cost sharing. Each party agrees to convey the necessary easements for this to be open to public travel. The Agreement provides that the Town will award the construction contract, with agreement of the other parties, and be responsible for oversight of the project. Payment to the contractor will be made by the Town from funds deposited by the parties in a fund established for that purpose. A 10% contingency - in addition to the project cost - is established. Under the Agreement, the Town will be responsible for plowing and maintenance of that portion of Hat Trick Drive which passes over Town land, i.e., that portion extending from Clearwater Drive to about the location of Family Ice. Falmouth Plaza will be responsible for plowing and maintenance of the remainder of Hat Trick Drive, out to Depot Road. Once the road is built, the Town may look at whether it makes sense to have the Town plow the entire road. The Town will also look at the current obligation of Family Ice to plow out to Clearwater. This document is not intended for recording at the Registry of Deeds.

2. Easement Agreement by and between the Town, Falmouth Plaza, LLC and J.E.P., LLC.

This Easement Agreement gives the Town, i.e., the public the right to travel over the extent of Hat Trick Drive on Falmouth Plaza and JEP land. JEP is a party to the Agreement because they are confirming the Town’s easement rights over JEP property. This is done out of caution since Falmouth Plaza already has the right to convey this easement to the Town. This Easement Agreement also contains language concerning posting of speed limits; allocated responsibilities for plowing and maintenance of Hat Trick Drive (see above); the Town’s obligation to plow the Twombly parking area and the Town’s right to use it as a Park & Ride; and the types of businesses which may not occupy Falmouth Plaza. This document is intended for recording at the Registry of Deeds.

3. Easement Agreement by and between the Town of Falmouth and Falmouth Plaza, LLC.

Essentially, this Easement Agreement gives Falmouth Plaza an easement over the portion of Hat Trick Drive that crosses Town land, i.e., from Clearwater Drive to about Family Ice.

4. Mortgage Subordination Agreement by and between the Guardian Life Insurance Company of America, Falmouth Plaza, LLC and the Town of Falmouth.

Guardian is the mortgagee of the Falmouth Plaza property. They need to subordinate their mortgage to the Easement Agreement referred to in item 2, above, so that, if they foreclose, the Easement Agreement remain in force. This document will be recorded.

5. Agreement by and between the Town of Falmouth and Family Ice.

Family Ice wanted this Agreement. It confirms that the “deal” relative to Hat Trick Drive does not affect the terms of the Lease between family Ice and the Town.