

Town Council Special Meeting and Workshop

DRAFT Minutes

November 14, 2012

The meeting was called to order at 7:02 pm.

Roll Call

All Councilors were present and answering roll call.

Item 1 Discussion with Senator Dick Woodbury and Representatives Mary Pennell Nelson and Mark Dion regarding various state and local matters including but not limited to proposed State legislation and budget projections.

Senator Dick Woodbury spoke about revenue sharing, school funding and transportation funding. Education funding is a significant portion of the State budget.

Representative Mary Pennell Nelson spoke about her work on the Education committee and the 15 year old EPS formula used to determine school funding, which they will be reviewing this year. 47% of the State's operating budget goes to support education at all levels.

Representative Mark Dion thought the next session of the Legislature would need to address the nature of education in Maine. The experience of students in Falmouth is not the experience of students throughout Maine. He supported technical education. He spoke about his work on the Energy and Utilities committee.

There was a Q&A session with the Council.

Item 2 Ordinance to amend the Zoning and Site Plan Review Ordinance to permit drive-thru and carry out restaurants in the Mixed Use Cluster District.

Councilor Orestis moved the ordinance; Councilor Farber seconded. Motion carried 7-0.

Item 3 POSTPONED Order to authorize the Town Manager to enter into an Administrative Consent Agreement with the owners of a certain parcel to address the owner's non-compliance with section 18-133 of the Town Sewer Ordinance.

This item was rescheduled to November 26.

Item 4 Presentation from the Land Management Team and subsequent discussion with the Town Council regarding forest management planning for Town owned property.

Town Manager Nathan Poore introduced the members of the Land Management Team, a collection of staff and committee members. The forest management plan to be proposed has been endorsed by the entire team.

Bob Shafto, Open Space Ombudsman, presented a brief history of land acquisition under the open space program. They have also made strides toward goal 5 of the *Greening of Falmouth*: to actively manage open space to benefit the community. There will be over 40 miles of trails in Town by the end of this year. They have also focused on wildlife habitat protection, education opportunities for children and adults, water quality, research, and forestry. Their objectives for the forest management plan are healthy forests, diverse habitats, safety, energy sustainability (by contributing wood toward the wood chip supply used to heat the schools), and revenue to the Town. He identified properties that were slated to be left in their natural state, those that were slated for active management and when that would take place, and those where harvesting may occur for safety reasons. The Land Management Team has three proposals. The first is to clean up Pine Grove forest. Pine Grove is full of large, old trees that are dying and becoming a hazard. Their second proposal is to create a habitat for cottontail rabbits in Community Park. The rabbits need a habitat in new growth forest; to create this they propose to clear-cut the existing scraggly pine stand and invasive understory and then allow the early successional stage forest to grow back, without the invasive plants. This plan depends on gaining access via Paddock Way. They only do this type of work during the winter when the ground is frozen. He showed the location of the proposed clear-cut area. Their third proposal is to do a timber harvest in Blackstrap Forest. This area has been logged continuously for 100 years. They would do a "worst first" harvest, removing the low-value trees and leaving the high-value ones. They want to establish a cottontail population around the hayfield in this forest as well. There will be a public meeting at the Library on December 1 from 9-11:30 am. At this meeting they will debut a video from Maine Forest Service on Falmouth's open space management, as well as present an overview of current management activities and get feedback. They will also take field trips to Community Park and Pine Grove. On December 10 the Council will vote on the proposed forest management plan.

Councilor Payne asked about the energy use of the timber harvested, and what the value is per acre. Mr. Shafto said it is likely all biomass; they get \$3 per ton. A cord of wood is 2.5-5 trees and produces 2 tons. There are 6-8,000 trees/acre. There isn't a lot of money in it, but they do get some income from it. Open space comprises 14% of the town total acreage.

Councilor Payne thought 2,400 acres would pull in \$84,000 if it was in tax revenue. He thought they would do well by harvesting that land for energy uses.

Mr. Shafto thought the foresters could answer that more fully on December 1. Hadlock is about 300 acres; \$35/acre would be \$10,500/year in taxes. They made \$26,000 in income in the two years of harvesting that property. The newest property, 100 Acre Woods, was heavily forested before the town got it and it will be years before they see any need or opportunity to forest it.

Councilor Rodden would like to see a spreadsheet that compared the income from the biomass versus the tax income. She would like more financial information next time.

Mr. Shafto said the forester cost \$600, most of which was paid for by a grant. The forester takes a cut of the sale of the biomass.

Councilor Pierce asked for more detail on cleaning up Pine Grove.

Mr. Shafto said they will be removing the dead trees that are standing. Removal of the trees on the ground is another issue. They would determine how many would be taken down based on the condition of the trees. It may be that it would be clear-cut. If they had been doing sustainable cutting over the last 50 years they wouldn't have this problem, because the new growth trees would be ready to come up.

Councilor Pierce wondered why the first step was to cut and not to remove the trees on the ground.

Mr. Shafto said it was about safety. Those trees are going to fall; the question is whether they let them fall on their own, knowing the area sees heavy use, or cut them.

Councilor Pierce wondered what type of equipment they would use in this area; Mr. Shafto said it would be much smaller than what was used in Hadlock.

Councilor Pierce asked if the plan for Community Park would impact the use of the recreational areas. Mr. Shafto described the area they are planning to address. It is between the trails. It will look like a mess when they first do it, but it will grow up and look better.

Councilor Pierce asked about promoting the meeting on December 1. Mr. Shafto said it would be promoted in the Forecaster and through the Town's normal channels. Councilor Pierce asked them to be specific in the advertising about what would be discussed.

Councilor Mahoney said he uses all these areas, and while he understood that it is for the health of the forest, it is important for people to understand that it will look different. Economics should be a part of how these areas are managed but he wanted them to be careful of how exuberant they are. Smart forest management should be their overriding goal; economics should be a side benefit. Mr. Shafto said the health and diversity of the forest is the primary concern; the economics is a side benefit.

Councilor Mahoney understood that they were playing catch-up based on the fact that they haven't done good forest management in the past, but wondered about doing it all in five years.

Mr. Shafto pointed out that these parcels are large; even though they are talking about a lot of acres impacted, it is a small section of the whole parcel. In Hadlock, they are cutting on a 10-year cycle. The goal is a diverse forest.

Councilor Farber would like a better idea of what percentage of each property they were talking about being impacted. She asked how vulnerable these properties are to fire. She asked how they planned to eradicate the invasives.

Mr. Shafto said the foresters could answer the question about fire. He said the only way to eradicate the invasives is to cut them and then treat the stumps with an herbicide.

Councilor Farber wanted to make sure that Pine Grove and Community Park were called out in the publicity, to make sure people understand that those are being discussed. She asked whether they were planning to replant the areas that they are proposing to cut.

Mr. Shafto said you get tremendous regeneration without planting. No planting is necessary.

Councilor Rodden suggested they have a field trip to Hadlock, to show people what it looks like after the property is cut. She wondered if they could find a middle ground, where they didn't have to cut down so many trees at once, but over time.

Mr. Shafto said they felt the two field trips they have planned are all they will have time for on December 1. Their goal is to get and maintain the range of habitats there are in town. These habitats don't stay in the state they are in; they have to be maintained. A field becomes a forest very quickly if it isn't mowed.

Chair Varney spoke about cutting done by the Pride Farm Forest Association; the summer after it is cut it looks terrible, but 5 years later you wouldn't know it was cut. 25 years later it needs to be cut again.

Item 5 Workshop on a proposed amendment to the Zoning and Site Plan Review Ordinance regarding ground floor tenant area limitations in SB1.

Councilor Orestis spoke about the suggestions proposed by FEDC president Jonathan Berry. He felt those suggestions merited being part of this discussion. This proposal was a progressive approach that included the footprint limits while looking for incentives for business to work with the guidelines in a positive way. He asked whether they could look at this and refer it to an ad-hoc work group or an existing council committee. He liked looking at it as a footprint “guideline” rather than a limit.

Mr. Poore thought it was a good idea to meet with any group interested in the discussion. A lot of similar items to those suggested are on the Council’s agenda already. He wondered about applicable staff and one or two councilors working with Mr. Berry and anyone else on some of these ideas and then bringing them back to the Council.

Councilor Pierce said there are many good ideas in the memo and they have been raised at CDC in the past. She liked Mr. Poore’s idea. She liked having one or two staff working with two council liaisons on the issue.

Councilor Farber wondered if all these suggestions go to one place; some of them seem discrete. She thought about some staff work, and maybe FEIC could work with FEDC to come up with some recommendations.

Mr. Poore agreed; the focus of his proposed group would be to identify what the council is already doing, where they are going, which are possible, which are not. If they have an open dialogue at committee level they might not make a lot of progress. That is why he suggested himself, staff, a couple councilors, Mr. Berry and whoever else wants to come.

The Council’s consensus was to move forward with Mr. Poore’s suggested working group. Their goal would be to identify the key issues raised in the letter, recommend issues to be referred out to committee, and map out the process.

Mr. Poore discussed the suggestions put forward by Mary Costigan and the staff memo from Community Development Director Amanda Stearns. He spoke about amendments that had been made to the proposed amendment in response to suggestions made previously. He felt that Ms. Costigan wanted three things; that they consider all conforming spaces as well as nonconforming spaces in the reconfiguration; that they maintain the limits on nonconforming spaces so that a reconfiguration on an existing structure couldn’t create a nonconforming space; and that they allow reconfiguration or “squaring up” of a space. If the Council wants to consider this squaring up, they should ensure that it would not have unintended consequences on other properties in the district. Ms. Costigan has also requested that the limit be increased from 50,000 to 80,000 sf.

Councilor Farber was concerned with the language of the amendment. The way it reads right now, if you have an existing nonconforming space, you cannot reconfigure it to create a greater number of nonconforming spaces than the one you have. Under this language, the current Wal-Mart couldn’t be broken into two tenant spaces of nonconforming size. She would like to see some language that would allow that a single building with a single tenant, without changing the building footprint, could be broken down into more than one, non-conforming tenant space.

Councilor Rodden felt that made sense, and it was their intent. They hadn’t addressed single tenant buildings. The Council agreed with this proposal.

Councilor Rodden would like to move forward with the current draft zoning amendment, drafted by Ms. Stearns, which included the 50,000 sq. ft. and the redistribution of tenant space. She would also like to include Councilor Farber’s suggested amendment.

Mr. Poore asked about Ms. Costigan's suggestions on squaring up and allowing 80,000 sq. ft.

Councilor Rodden understood the business community to be proactive, but the proposal of 80,000 sq. ft. goes against the goal of the committee to make Route 1 more walkable. The drawing submitted showing the squaring up backs up to the creek and expands at the back of the shopping center. She felt it was out of character with the Town.

Councilor Farber thought the Council would be open to hearing from a developer with a particular plan regarding a contract zone. There is nothing there that would discourage special projects in SB-1.

Chair Varney felt the 50,000 sq. ft. was too small. She didn't think a contract zone was the only way a developer should have to go.

Councilor Payne spoke about the character. The renderings that were provided showed the additional sq. ft. at the back of the property, where it wouldn't impact walkability or appearance. This is a distressed property. He felt that development would start to pick up, and he wondered if they are going to get a fair crack at the type of retailers that are going to desire that space. 80,000 sq. ft. isn't unreasonable and doesn't attract big box development. He spoke about the redevelopment of a former big box store by Jackson Labs in Ellsworth. He wants to provide flexibility to the property owners to go to the market and see what they can get. He didn't think allowing 80,000 sq. ft. and squaring off the building at the back of the property was unreasonable.

Councilor Rodden was concerned about the creek at the back of the property, the stormwater treatment and the watershed. She didn't want to see a situation like Long Creek in South Portland. The reason they have an empty Shaws has nothing to do with the Town; that building has been empty because of the lease agreement the Shopping Center made with Shaws. Shaws has been paying for that space. That was a business decision they made and was not due to the Town. The footprint limit allows them to have more control over what they want their town to look like. She researched the footprints of the retailers that Ms. Costigan suggested would need a space of 80,000 sq. ft. She found that most of these retailers averaged between 16,000-32,000 sq. ft. stores. She thought they could get good tenants with a 50,000 sq. ft. cap.

Councilor Mahoney wanted to have a distinction between new and existing construction. He supported a cap of 50,000 sq. ft. on new construction, with the option for a contract zone for projects over 50,000 sq. ft. He felt the Council is unanimous in their desire to have a thriving, vibrant commercial and transportation corridor on Route 1. He agreed with Councilor Rodden that the reason the property is distressed is due to a business decision of the owners, and not the Town. He felt Route 1 is a vibrant place, and they are lucky to have it. He felt businesses want to know what is expected of them, and that it is going to be consistently applied. He felt there was some room for flexibility for existing, nonconforming structures. He thought they should have a limit of 60,000 sq. ft. for existing space and he based that number on the existing Shaws, combined with the vacant space at that end of the shopping center. He felt that was consistent with what they have heard from both business owners and residents. They have received a lot of public input from residents.

Councilor Farber favored a tiered approach, where smaller projects had a pre-permitting system, larger projects went to the Planning Board and any project over 50,000 sq. ft. went to the Council for a contract zone. She was comfortable with what they have and was not persuaded by Councilor's Mahoney's proposal.

Councilor Pierce felt they need to have a balance between what owners can do with their property and what residents want their community to look like. She supported 50,000 sq. ft.; she could live with Councilor Mahoney's proposal, though she wasn't sure it was necessary. She was not interested in the 80,000 sq. ft. to the back of the property at all.

Councilor Orestis has tried to benchmark the sizes that have been discussed. He found the information Councilor Rodden gave in regards to the average footprints of retailers compelling. In the regional community, Yarmouth is talking about a 50,000 sq. ft. limit as well. He pointed out that Whole Foods in Portland is 50,000 sq. ft.; Cinemagic in Westbrook is 57,000 sq. ft. The more he researched, the more it validated that they are on the right track with that 50,000 sq. ft. number.

Councilor Rodden didn't agree with Councilor Mahoney's proposal. The ordinance as it stands allows for existing space to be reused. She felt that was enough. She felt the suggestions to date have been reasonable and based on good data. She would rather stick with what they have been working on. She didn't think adding 10,000 sq. ft. to the limit would make that much of an impact.

Councilor Payne felt this was an opportunity to flesh out new ideas. He could go along with the 60,000 sq. ft. He pointed out that the Planning Board isn't going to let the property impact the creek. He spoke about the letter they received from Elizabeth Moss, who wrote about smart growth principles. She stated that her business is struggling without an anchor tenant. They have heard from the business community that they need more flexibility. He was comfortable with Councilor Mahoney's suggested compromise.

Councilor Farber asked if Councilor Payne would be willing to support the 50,000 sq. ft. in new construction if they allowed 60,000 for existing space.

Councilor Payne said he was. He pointed out that contract zones are and have always been an option, but those zoning processes are long and expensive. They shouldn't default to those.

Councilor Mahoney pointed out that the schematic showing the 80,000 sq. ft. for the vacant Shaws was only intended for illustrative purposes, and not a proposal.

Councilor Farber wondered if and how it would impact other properties if they go to 60,000 for existing spaces and how it would be written.

Councilor Mahoney suggested adding a clause to 3.6.3.b to allow the break up of one nonconforming space into multiple pieces that might also be nonconforming, and also adding a clause that adjacent tenant space could be added to a nonconforming space to bring it to 60,000.

Councilor Farber wondered if he wanted to allow them to add 10,000 to any existing nonconforming space. Councilor Rodden said this would only apply to the vacant Shaws. It is the only one above 50,000 sq. ft.

Councilor Mahoney thought they could say that any existing nonconforming could be 60,000.

Councilor Farber wondered if they are talking about new construction onto existing space, or conversion of existing space.

Councilor Mahoney clarified that he was talking about conversion of existing space, not adding onto the existing building, but he thought it could make sense to allow them to add to the footprint in the back.

Councilor Farber thought what he was proposing was that conforming and nonconforming tenant spaces could be reconfigured into one, 60,000 sq. ft. tenant space, so long as the number of nonconforming tenant spaces did not increase.

Councilor Mahoney agreed. They wouldn't have to go into the Lamey Wellehan space; they could go into the tenant spaces on the other side.

Councilor Payne pointed out that the vacant Shaws would become an anchor property, and they would want to preserve as many small storefronts between the two anchors as possible.

Mr. Poore asked if their intent was to only allow squaring off of the existing space, and not to create a whole new section. The Council agreed with that statement.

Councilor Farber could agree with this, as long as they are talking about allowing the old Shaws space to go to 60,000 sq. ft. Councilor Pierce, Councilor Orestis, Councilor Rodden and Chair Varney agreed.

An order was scheduled for November 26.

Item 6 Resolution that the Town Council may officially recognize that one of its two positions on Metro Board may be filled with a Falmouth resident, regardless of his or her elected or employed status with the Town.

Councilor Payne pointed out that the existing METRO Board is comprised almost entirely of elected officials and paid staff. There is only one exception. There is an accountability loop there and he would feel more comfortable with an elected official.

Chair Varney felt it was sufficient to have one elected official. The other position could be anyone.

Mr. Poore said 2 out of the 3 members from Westbrook are neither elected nor hired.

Councilor Payne said this is about public expenditures and he felt it should be a public official.

Councilor Farber pointed out that the Council would still make the appointment, and they would choose the best person for the job. She asked what this person's decision making power was in regards to the budget.

Mr. Poore said the Board decides the budget; the Town has the ability to appeal to the PUC. The Board's power is similar to that of the Council.

Councilor Farber was comfortable with the proposal.

Councilor Pierce asked if they have to have at least one paid employee.

Mr. Poore said that is the case the way this is written. This is by the Council's appointment, and it is up to them who they want to represent them. The way this is written, at least one representative has to be either an elected official or a paid employee.

Chair Varney's concern was that, for an elected official, they can only be on for 6 years. It takes some time to get up the speed on the METRO Board. She liked the proposal.

Councilor Rodden pointed out that this person would be up for reappointment every three years.

Councilor Orestis supported the idea of opening up the seat to the broadest talent pool possible. Councilor Mahoney agreed.

The Council discussed amending the language to make it clear that only one appointee could be a resident; the other would be an elected official or town employee. Councilor Mahoney suggested adding in the resolve "and the other position to be filled by a town councilor, the town manager or his/her designee".

Councilor Pierce moved to the resolution with the changes proposed; Councilor Farber seconded.

Motion carried 6-1 (Payne).

Item 7 Order to confirm the appointment of two members to represent Falmouth on the METRO Board.

Councilor Pierce moved the order; Councilor Mahoney seconded. Motion carried 7-0.

Item 8 Discussion about the Greater Portland Transit District (Metro Bus) preliminary FY 2013 budget.

Mr. Poore said this is a preliminary budget; by statute the METRO Board has to provide the preliminary budget and funding formula by October 31 and each municipality has 30 days to file objections. He suggested that the Council pass any concerns about the budget to the Board through its appointees.

Councilor Mahoney noted the overwhelming support of Falmouth voters to keep the bus. There has been a lot of discussion about the cost of the bus.

Item 9 Order to authorize: (i) the adoption of a Flexible Benefits Plan and the execution of the plan by the Town Manager and (ii) entering into an administrative services agreement with a third party for the administration of the plan and to authorize the execution of the administrative services agreement by the Town Manager.

Councilor Pierce moved the order; Councilor Rodden seconded.

Councilor Payne asked if the flex plan is a ‘use it or lose it’ plan. Mr. Poore said it is.

Assistant Town Manager Amy Lamontagne said they have had two educational sessions for employees; open enrollment would start tonight and run through early December. The plan would take effect January 1, 2013.

Councilor Pierce wondered how many municipalities offer this. Mr. Poore said it is very common.

Motion carried 7-0.

Item 10 Discussion about future Council agendas.

Mr. Poore spoke about items scheduled for upcoming Council agendas.

Councilor Rodden asked if there would be public comment on the footprint limit. The Council agreed that the public could comment on the footprint limit during public forum.

Adjourn

Councilor Farber moved to adjourn; Councilor Payne seconded. Motion carried 7-0.

Meeting adjourned 10:51 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary