

**Town Council Meeting
DRAFT Minutes
March 24, 2014**

The meeting was called to order at 7:00 pm.

Roll Call

All Councilors were present and answering roll call.

Pledge of Allegiance

Chair Pierce led those present in the Pledge of Allegiance.

Item 1

No one spoke at public forum.

**Item 2 (a) Order to approve the minutes of the February 10, 2014, Town
(Consent Agenda) Council Workshop Meeting.**

**Item 2 (b) Order to approve the minutes of the February 24, 2014, Town
(Consent Agenda) Council Meeting.**

Councilor Mahoney moved the orders; Councilor Farber seconded. Motion carried 7-0.

**Item 3 Report from Council Committees and liaisons regarding updates
on assignments.**

Councilor Farber said the Finance Committee will meet with the School Finance Committee on Thursday, March 27.

Councilor Goldberg said the public hearing for the FY15 budget will be held on April 10. Falmouth Middle School's Iron Twinkies won the jazz band championships. The High School came in second in the one-act play competition; they will move on to regional competitions.

Councilor Mahoney said LMAC is meeting with a number of land owners on stewardship and land management tomorrow.

Councilor King said the energy use and efficiency database is almost complete. Hopefully results will be presented in late April. Mason/Motz open house and tours will be held on Thursday March 27 from 5-7pm and on Saturday, March 29 from 10am-12pm. Everyone is welcome to come see the buildings and provide input on proposed changes.

Councilor Anderson reported that the bids on the Route 1 project came in; the low bidder came in higher than the budget by a considerable amount. The CDC, engineer and Town staff have worked with the utilities and are confident they can bring the numbers down closer to the budget. They will likely have a report for the Council in the next month.

Item 4 Report from the Appointments Committee and order relative to filling various vacancies on Boards and Committees.

There was no report.

Item 5 Order to authorize the Town Manager to enter into a contract with Cumberland County regarding assessing services in Falmouth.

Chair Pierce opened a public comment period.

Carol McNaught of Hideaway Lane sent the Council an email on March 6. She urged the Council to follow their instincts; if it doesn't feel right, they shouldn't do it. She has heard many valid reasons why they shouldn't go down this path. It is similar to school consolidation. If they are going to share an assessor, why not hire a part-time one outright and do away with a contract. Falmouth is a different community than Yarmouth or Cumberland. She felt the evidence was overwhelming why this shouldn't happen.

John Winslow of Gray Road asked the Council to vote no on this contract. He argued that the Town will still have to provide dedicated office space to assessing staff, which was not factored into the reported cost savings. Driving into Portland and finding parking would be difficult. He visits the office several times a year with questions, and often needs to speak with other departments at the same time. He spoke highly of Anne Gregory and her help with his property and the tree growth program. The office offers highly personalized help.

Jonathan Berry of Falmouth Road said he has been approached by several different residents, asking him to review the contract professionally. This alters an arrangement set by the Charter. The Charter calls for a division of tax assessment and a "Town Assessor". As it is drafted, the contract vests all authority in the County. He felt it was a stretch to call that a "town assessor". The Charter says the Town Manager shall have sole authority to hire and fire the Town Assessor; the contract says the County shall have that authority. He suggested that this would require a charter amendment, which requires going to the voters to let them decide.

Lynn Foley of Stonewall Way has dealt with assessing in the past; she felt fortunate in the degree of competency and performance in the assessing office. She was disappointed in a lack of transition between a long-term employee and a new organization. She has read the contract and was not confident in it.

Stan Given of Hillside Avenue spoke about the difference between the numbers he has provided the Council and what the County assessing office is proposing. He didn't think the staffing at the County was adequate. He spoke with two assessors at two communities that had considered outsourcing to the County; they both felt there was a lack in the services the County was offering. One said they didn't want to hand over the reins to an outside group because they were afraid the level and quality of service would go down. The one thing that they don't want to happen is for people to lose trust in their assessments; it would be hard to get that trust back. He urged the Council to vote this down; he felt it was a bad idea on many levels.

Public comment period closed.

Councilor Farber moved the order; Councilor Goldberg seconded.

Councilor Anderson felt there were two questions: does the Council have the authority to make this change, and is it a good idea.

Chair Pierce said the Town Attorney gave a thorough analysis of the Town Charter in relation to their authority.

Councilor Anderson felt the question of authority was a good question; he disagreed with Town Attorney Bill Plouffe's determination that they have the authority. Section 601 states that "*The Town Manager shall have exclusive authority with respect to the appointment and firing of the Town Assessor.*" The contract language states that the Town Manager will be consulted with respect to the hiring and firing of the Town Assessor, but that the County controls that decision. He felt that was a glaring inconsistency. While it doesn't say the Town Assessor has to be an employee of the Town, it doesn't say that about any employee, including the Town Manager. Under that interpretation, they could contract out for a Town Manager. He didn't think this is the intent. He spoke about the change to the Charter that led to the Town Assessor reporting to the Town Manager; he felt the language was written to prevent this type of change. He also felt section 204.2 of the Charter is inconsistent with this change. They can "*By ordinance create, change and abolish offices, departments or agencies, other than the offices, department and agencies established by this Charter*". Assessing is established by the Charter. Attorney Plouffe does not address this section in his letter.

Councilor Mahoney felt the responsibility for the Assessor has clearly been transferred from the Council to the Town Manager. It may have been a close vote, but it was settled. He didn't see this arrangement as abolishing the office or assigning its duties to another department or agency; this will not change the function of the office, merely how it is staffed. He agreed that there may be some conflict between the wording of section 601 and the contract, but he felt comfortable with Attorney Plouffe's interpretation.

Councilor Farber pointed out that, while it is the County that can hire or fire the individual, the Town Manager retains the ability to assign or un-assign that individual as the Town Assessor.

Town Manager Nathan Poore said that authority is in article 1A of the contract, where it says "*designated by the municipal officials of said Town as their assessor per State law and/or Charter...*"

Councilor Farber said the Town retains the right to go their own way. Whether that individual remains an employee of the County is irrelevant.

Councilor Anderson said section 3.5 of the contract states: "*The COUNTY shall consult with the TOWN regarding the assignment of an individual to be the Assessor of Falmouth...*" The Charter says that the Town Manager has exclusive authority to hire and fire the Town Assessor.

Chair Pierce pointed out that the next sentence in contract states that "*The County recognizes that the individual must be designated by the municipal officials of the Town as the assessor per State law and/or Charter.*"

Councilor Anderson argued that the Town would only be able to pick from the people on staff; while the Town may be able to participate in the hiring process, it will be the County's decision who to hire. That is not what the Charter says.

Councilor Farber pointed out that they can leave the contract. The Town Manager can decide that it isn't working and appoint a consultant to serve as the Town Assessor. She pointed out that, while the vote on the charter committee was close, the charter amendments went before the voters and were approved.

Councilor Anderson was glad the ability to withdraw from the contract was reduced from 12 months to 90 days.

Councilor Goldberg wondered what the Town would do if they had a sudden vacancy in staffing in assessing. Mr. Poore said the Town would be faced with the same process: looking at new staff, a regional process, or contracting out the service.

Councilor Goldberg felt the Town Manager has the authority to do that under the Charter. This situation is no different.

Councilor Anderson felt what the Town Manager would do in a temporary, emergency situation is different than making a long-term change.

Councilor Farber asked the difference between this arrangement and contracting out with a firm that provides assessing services.

Councilor Anderson said it is no different; the way he read the charter, sub-contracting this department is prohibited. It is different from a short-term arrangement to cover a gap in staffing.

Councilor Goldberg didn't think it was different.

Mr. Poore spoke with Attorney Plouffe today about section 204.2; Attorney Plouffe said the key provision is that the Town is not giving up any authority because the Town is retaining its appointment power. When they drafted the contract last summer, the attorneys reviewed all the charters of the towns. The question of employment came up. The key is the Town's authority to appoint the Town Assessor; the Town can refuse to appoint an individual hired by the County.

The consensus of the Council was that they have the authority to enter into this contract.

Chair Pierce agreed that assessing is an important function of the Town. It is near and dear to people's hearts and change is difficult. The model is changing no matter the decision tonight. She asked Mr. Poore to explain how this arrangement will work.

Mr. Poore said they have discussed the services model; the assessor would have office hours 4-5 half-days in Falmouth. They can make adjustments if there is not enough time. There will still be service with staff that can answer some questions and help find information. His understanding is that there will not be many office hours at the main office in Portland; they will be at the town offices or out in the field. They will also be available electronically or by phone.

Councilor Orestis asked how many urgent assessing questions there have been in the office this year.

Mr. Poore said there are different levels of questions – easy ones that the receptionist can answer, more detailed ones that the administrative assistant can answer, and the ones that only the Assessor can answer. He said he could research that question and bring the answer back.

Councilor Mahoney felt Ms. Gregory had provided that in the document presented at the last meeting.

Mr. Poore said he spoke with Gary James and he has had 25-35 customer contacts in a 6 month period between both Cumberland and Yarmouth.

Town Assessor Anne Gregory said the field appraiser works by appointment, but the assessing office doesn't typically make appointments because they are always available. It is hard to quantify.

Councilor Orestis said responses by email and phone can be done anywhere. He asked how many urgent, in-person meetings she has had in the past month.

Ms. Gregory had a hard time estimating but said she helps with urgent calls on real estate closings, for example. Councilor Mahoney felt it wasn't the job of the town assessing office to save real estate closings.

Councilor Orestis felt there wasn't a huge demand for in-person contact; a lot of the work can be done by email and phone. Ms. Gregory agreed, depending on the time of year.

Councilor Mahoney didn't think the arrangement meant that there were only meetings by appointment; there would be standing office hours where people could just drop by.

Mr. Poore agreed; even if there is a time that someone is supposed to be here and isn't, there will always be someone in the office that can talk with customers, get their information and get that to the Assessor.

Councilor Farber asked Mr. James about his numbers on staff time and on field appraisals.

Gary James, Director of the County Assessing Office, said he has always been available to work early mornings, nights and weekends to do field appraisals. He has a cell phone and email, and will be available at one of the three town halls. Walk-ins and emergencies are rare; he has seen 1-2 a month. If he gets a message, he gets back to people the same day.

Councilor Orestis said a Falmouth resident could meet with Mr. James in Cumberland or Yarmouth if it was more convenient.

Mr. James said they can meet with him at any office at any time. He has looked at a staffing schedule and where staff would be; he wants to provide customer service in the town halls. He thought they would have someone here that focuses on personal property 2-3 half-days a week. He would be here a couple mornings a week, and a field appraiser would be in town but not in the office; they would be out in the field. He tried not to set it up so that they would be here all day Monday, but not on Tuesday at all.

Councilor Anderson pointed out that Mr. James was already working 12 hours a day, 7 days a week, serving two towns. He asked how he would keep up adding Falmouth, and maybe another town.

Mr. James said he wouldn't be the only person on the team. Yarmouth and Cumberland went for months without an assessor, and he has been catching up with the backlog of work. He is just about caught up.

Councilor Anderson wondered how big this operation is going to get in the future.

Mr. James didn't know the vision for the future. He said Casco has sent out an RFP for assessing services. North Yarmouth has reached out and is considering it as well. There is no

one town ready to come on board, and he doesn't expect one in the next 3-4 months. He felt it was possible that more towns could join in the next few years. Many assessors are approaching retirement and there are not a lot of young assessors out there. It could get bigger, but he felt it would be a benefit to every town that was included, since they would have more staff, better staff, and more coverage. His specialty is commercial assessing; if he can bring on a specialist in residential, or personal property, it would improve the service.

Councilor King said the contract says they would have an assigned assessor; it is sounding like what they would have is an assessing team. She wondered if the assigned assessor would be identified as just for Falmouth.

Mr. Poore said until the specialization comes in, they would have one assessor that knows the community best and would be appointed to represent Falmouth in all appeals.

Chair Pierce said the concern is with losing institutional knowledge at the town. Whether they hire someone or go with this arrangement, there will be a learning curve.

Mr. James said he would be the Town Assessor and would be responsible for answering to the state. He would take the oath of office as the Assessor. He would have a team, much like Ms. Gregory has her staff to support her. It is the same relationship.

Councilor Mahoney said Mr. James would be an employee of the County, but would be designated as the Town Assessor by the Town Manager. If his performance was not up to par, the Town Manager could make the decision to assign someone else.

Mr. James said the Town Manager can't fire him from the County, but he can withdraw from the County contract for any reason.

Councilor Anderson asked, if the Town Manager doesn't have a problem with the arrangement but with Mr. James specifically, could he assign someone else in the office.

Mr. James said the Town Manager could assign any other CMA in the office. He hoped he would have several in the office eventually as it grows.

Councilor Farber asked about the municipal oversight committee; who would be appointed – Councilor or staff - and how often would they meet.

Mr. Poore said it would be the Town Manager and their designee(s), since the managers are looking at this as a joint department. The annual meeting would be prior to the budget from the County, which is delivered in September.

Chair Pierce called the question.

Motion carried 5-2 (Anderson, Orestis).

Item 6 Walmart representatives to present a request for a zoning amendment for a special district to accommodate the garden center and loading area as previously approved.

Joan Fortin of Bernstein Shur, representing Walmart, explained that the company decided not to move forward with their expansion plan last year. She is here to request a garden center overlay district. The store has been operating an outdoor garden center for many years, but the zoning

change approved last year doesn't allow the garden center to be as large as it has been in the past. The store would like to continue to operate as they have been. They have been working with Town staff to try and match the underlying zoning as much as possible. They are proposing a plan that would include increased landscaping along Clearwater and Hat Trick Drive, along with increased lighting. They would also install a decorative, screened fence to screen the outdoor storage of pallets.

Councilor King said this is an ordinance amendment; she asked why she used this method instead of an exception.

Amanda Stearns, Community Development Director, said the ordinance doesn't provide an exception in this instance. They can only grant exceptions where the ordinance allows them. This would create an overlay district with an associated map.

Mr. Poore said the other piece of this would include improvements to Hat Trick Drive. Those improvements have been planned since the early 2000's. The project would cost \$525,000 and would include two new travel lanes; bicycle and pedestrian accommodations, including a sidewalk; improved lighting; and perpendicular parking spaces. Copies of this plan are available at Town Hall. The funding for this would be in an agreement between the three parties; 1/3 cost sharing between the property owner, the Town, and Walmart. The Town would receive public easement rights over the road, though it wouldn't be a town road. They have discussed agreements for maintenance of the road. The first draft of this agreement will come to the Council before a vote on the ordinance amendment.

Councilor Farber asked if they are here due to the rezoning. Chair Pierce said that Walmart was in the middle of the approval process for the expansion during the rezoning.

Ms. Fortin said the rezoning grandfathered the expansion; since the expansion didn't happen, they are now out of conformance with the rezoning.

Councilor Farber thought that a rezoning doesn't make something that was in effect prior to its passage suddenly out of conformance.

Ms. Stearns explained that while Walmart was going through the approval process, the Planning Board granted them a temporary, one-year use of the garden center during the expansion approval process and it was re-approved three times during that process. There are no permanent land-use rights in effect for the garden center. Those were included in the expansion. Even if they could meet zoning with the current garden center, any site plan application would require them to bring the entire site into compliance with VC-1. She said Hat Trick Drive has always been part of Walmart's site plan improvements, beginning in 2004.

Item 7 Introduction by Councilor Chair Pierce for a zoning amendment to establish a special overlay district for the Walmart Garden Center.

Councilor Mahoney asked what would happen if they didn't move forward with the amendment.

Ms. Stearns said that, without any special consideration, the garden center would be limited to 2500 sq feet, the outdoor bale and pallet storage would have to be moved inside a structure, and they would have to move the entire site up to current zoning standards if they went to the Planning Board.

Councilor Goldberg said Walmart will get a bigger, better garden center; Hat Trick is upgraded and is better looking, Family Ice gets more parking, and they might get a new, hockey rink. This area would be revitalized and look better.

Councilor Anderson pointed out that the vast majority of the costs of those improvements would be privately funded. This is a terrific deal all the way around.

A public hearing was scheduled for April 16.

Item 8 **Order to schedule a public hearing on the FY15 Municipal and School Department Budgets for April 10, 2014.**

Councilor Orestis moved the order; Councilor King seconded. Motion carried 7-0.

Item 9 **Order to change the date of June 16, 2014 Annual Town Council organizational meeting.**

Councilor Goldberg moved to change the date to Wednesday, June 18; Councilor King seconded. Motion carried 7-0.

Adjourn

Councilor Mahoney moved to adjourn; Councilor Anderson seconded. Motion carried 7-0.

Meeting adjourned 8:43pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary