

**Town Council Meeting  
July 26, 2010  
Minutes**

**Roll Call**

All Councilors were present and answering roll call.

**Public Forum**

Chair Payne opened the public forum and explained the rules.

Lisa Preney, 142 Middle Road, announced that a Google group, “Falmouth Citizens for Sound Choices”, has been set up and anyone can join. She read its mission. She and others have started a citizens’ petition to postpone the referendum until options for private development have been fully explored. She asked that the item be tabled.

Mike Doyle, Shady Lane, said the town leaders waste taxpayer money. He gave examples from information he requested from the Town Manager. He announced that he is suing the Town Council for the \$500 they paid for police presence at Council meetings.

Chair Payne closed the public forum.

**Item 1 (a) Order to approve the minutes of the May 10, 2010, Town  
(Consent Agenda) Council Special Meeting.**

**Item 1 (b) Order to approve the minutes of the May 24, 2010, Town  
(Consent Agenda) Council Meeting.**

**Item 1 (c) Order to approve the minutes of the June 21, 2010, Town  
(Consent Agenda) Council Organizational Meeting.**

**Item 1 (d) Order to approve the minutes of the June 21, 2010, Town  
(Consent Agenda) Council Meeting.**

**Item 1 (e) Order to certify the June 8, 2010 Election results.  
(Consent Agenda)**

**Item 1 (f) Public Hearing and order to renew food service/victualer's  
(Consent Agenda) licenses for Johnny's Bistro & Bar.**

Councilor Breen moved to remove Item 1 (f) from the Consent agenda. Councilor Pierce seconded. Motion carried 7-0.

Councilor Armitage moved to approve the consent agenda items 1 (a) through 1 (e). Councilor Pierce seconded. Motion carried 7-0.

**Item 1 (f) Public Hearing and order to renew food service/victualer's licenses for Johnny's Bistro & Bar.**

Chair Payne opened the public hearing; there was no public comment.

Councilor Pierce moved to approve the renewal of a food service/victualer's license; Councilor Armitage seconded. Motion carried 7-0.

**Item 2 Report from Council Committees and liaisons regarding updates on assignments.**

Councilor Armitage reported that the Appointments Committee has met and is resuming their regular meeting schedule.

Councilor Chase reported that the dumpster at Town Landing is being removed.

**Item 3 Report from the Appointments Committee and order relative to filling various vacancies on Boards and Committees.**

There was no report from the appointments committee.

Councilor Rodden moved to waive Council rules and take Item 5 out of order. Councilor Pierce seconded. Motion carried 7-0.

**Item 5 Public Hearing regarding a proposed amendment to the Metro Bus Route 7 schedule.**

Councilor Rodden explained that this is a recommendation from a number of residents who would like to change the schedule of the METRO bus. There has been more discussion in the community, and an alternate schedule has been proposed from what the Council previously discussed. In this alternate schedule, there will be two runs to Town Market at 10:55 am and 1:55 pm. These stops currently go to OceanView. As it currently stands, Town Market only has stops during commuter hours. If the METRO Board approves these changes, these could take effect as early as September 12.

Chair Payne opened the public hearing.

Annie Finch of the Friends of the Falmouth Flyer explained the reasoning behind this change. They are trying to make the schedule friendlier.

John Radebaugh from OceanView spoke in favor of the bus and brought a petition signed by 44 people in support of this proposal.

Tess Parrish of Applegate said she was grateful for the mid-day busses.

Althea Finch-Brand and Claire Constantine, students from Falmouth Middle School, said they ride the bus everywhere and plan to ride it for many years to come.

Rabbi Harry Sky said that he has made more friends on the bus than anywhere else. The bus gives seniors the mobility and ability to keep in touch with life.

Chair Payne closed the public hearing.

Councilor Rodden urged the Council to support the schedule change. She said that no ADA riders on the RTP bus would be affected.

Councilor Rodden moved to waive the Council rules in order to hold a vote to approve the schedule change as recommended by the residents. Councilor Pierce seconded. Motion carried 7-0.

Councilor Varney moved to accept the recommendation for a schedule change as proposed by residents; Councilor Breen seconded. Motion carried 7-0.

**Item 4                      Presentation of the Shoreline Stabilization and Utility  
Assessment draft report.**

Councilor Rodden recused herself as she owns property on Shoreline Drive.

Jay Reynolds, Director of Parks and Public Works, explained that in 2009 it was brought to their attention that there were some slope stability and erosion issues along Shoreline and Bayside Drive. Another concern was that the Town's storm drain infrastructure and municipal sewer system were contributing to the problem. He discussed the steps that have been taken, including hiring Wright-Pierce to assess the situation and write a report. They have held two public meetings with town residents. The consultants compared the topography from 1969, when the sewer was installed, to the topography today to see what has changed.

John Edgerton, of Wright Pierce, presented the draft report. They studied the area from the Martin's Point Bridge to Brown Street. They scope of the study was to review for areas of slope erosion or instability, and assess the conditions of the interceptor sewer, the storm drain outfalls and the streets. They were asked to identify mitigation strategies, gauge likely costs, and discuss regulatory requirements. They held two public forums, one in November of 2009 and one in July of 2010, and mailed a survey to key landowners. He explained how the soils contribute to the problem. The lower portion of the slope needs to be stabilized, likely with rip rap as a cost effective measure. They estimate a cost of \$30,000 to \$40,000 per square foot. Maine DEP and Army Corp permitting would be required. They compared the topography from 1969 and 2009 and found varying rates of soil loss. He discussed the items they need to consider in designing the slope stabilization. He discussed the condition of the sewer and the challenges associated with repair. The storm drains are in pretty good condition. There are some areas of erosion that they suggest addressing with placement of riprap and some pipe repairs. There are a couple dozen storm drains in the study area. The streets are in good condition. One area in particular is at risk from slope failure, from Avon to McKinley. In moving forward, the role of the town would likely be to coordinate funding and providing program management. They are looking at the need for local funds for areas where municipal infrastructure is threatened and for maintenance of municipal property. FEMA funding may be available. They are looking for Council guidance on next steps, funding acquisition, coordinating property access rights and the schedule moving forward.

Councilor Chase asked about safety issues. He thought there are some open holes.

Mr. Edgerton thought it was possible.

Councilor Chase thought if there were any, it would be an emergency situation and they would have to dump some riprap in there.

Mr. Edgerton said that anything they do within 75 feet of the high water mark requires DEP approval.

Councilor Chase thought the collector pipes must be at the end of their life.

Mr. Edgerton said a well-installed pipe will last. He has seen this type of pipe at this age in good shape, but in these type of conditions, it is worth a look.

Pete Clark said the pipe they have seen is in good shape, but it is a consideration.

Councilor Breen went to the public meeting in July. On Bayside Drive it is private property all the way to the high water mark. With private rights come private responsibilities. She suggested staff investigate what other seacoast towns do in relation to the public/private responsibility sharing, from a policy and funding perspective. She wanted to make sure they use tax dollars for public infrastructure. If there is a significant public investment, there should be significant public access.

Councilor Armitage spoke about his family's camp, and how they have experienced significant land erosion over the last 50 years. If the town is investing in this, they should have some ability to say what people are doing. It will be a fine line between what they invest to maintain and address a public need on private property.

Councilor Pierce agreed. Most of this is private property. She asked if any of this is public property.

Mr. Edgerton said there is a small amount of public property.

Councilor Pierce wondered about having more access to the water if they are going to invest in it. She would be interested in what other towns have done.

Mr. Edgerton said they could look into that.

Councilor Pierce said there should be certain standards that the landowners have to meet. They should not be allowed to let it slide while their neighbors do everything they are supposed to do.

Mr. Edgerton said some landowners have already put effort into stabilizing their land.

Councilor Varney said there is a Lake Association on Highland Lake, which monitors lake water quality and has addressed wave action. She asked if there is any such association along the ocean.

Mr. Edgerton said not to his knowledge. He thought it was too big a resource to effectively bring them together.

Councilor Armitage asked if the tax assessment on these lots has been adjusted for any loss of property due to erosion. He spoke about Wells and Saco dealing with oceanside erosion issues and thought it would be helpful to see what other communities have done.

Councilor Breen said that repairs to the shoreline must be uniform. One landowner doing repairs alone may make the situation worse. She liked the suggestion of an association, and mentioned that the town has contributed to the Youth Corps going out to private

property along Highland Lake and installing culverts, etc. There are a lot of models on public/private partnerships.

Nathan Poore, Town Manager, said this started due to the public infrastructure problems. The improvements to private land would piggyback whatever effort was made on public infrastructure. The town would not have been able to spend a dollar on design and engineering if this was about private property. One difficulty is that there is a narrow right of way between the edge of the pavement and the water. He felt they needed to focus on the proposed first phase.

Councilor Chase said the town needs to lead the way. He didn't feel that they are talking about public vs. private property. When they laid the sewer they took on certain obligations. He felt they needed to deal with this in increments, sooner rather than later.

Councilor Armitage didn't feel there was any way they can pay for all this; he wondered about a mechanism like the PACE program.

Nathan Poore thought they could create a special assessment district.

Chair Payne wondered about what is in the existing sewer easements regarding rights and responsibilities the town has. He asked the total linear footage.

Mr. Edgerton said it wasn't relevant to talk about the whole project area, as some of it has been stabilized and some of it isn't threatened. The first phase, labeled imminent risk, constitutes approximately 300-400 feet, so \$100,000 - \$150,000. Stabilizing manholes would also fall under this first phase.

Chair Payne asked the Council if they wanted this to be pursued with some urgency, resolving the property rights issues parallel with the engineering.

The majority of the Council agreed. Councilor Breen wanted to have a better sense of the shared responsibilities and investigate sharing models first.

Nathan Poore clarified that the Council wants to pursue Phase 1, with the 3-4 property owners affected, take a look at other models from other communities, look at funding models and FEMA mitigation, and return with the full report with the other phases for another check in.

The Council confirmed those statements.

**Item 6                      Public Hearing regarding an amendment to parking restrictions along Woodville Road.**

Chair Payne opened the public hearing; there was no public comment.

An order will be scheduled on August 9.

**Item 7                      Sam Rudman, Chairman of the Long Range Planning Advisory Committee (LPAC+), will present the Committee's first Progress Report to the Council for a check-in. LPAC+ is working to update Comprehensive Plan 2000 and has met six times to date.**

Sam Rudman gave a brief history of the work of the committee to date. They began by reviewing all the reports that have been written already. They have divided into three

sub-committees to review these. They have created a survey that is posted on the Town's website, and has been distributed at the Library and Town Hall.

Councilor Breen said the Appointments Committee would like to ask a regular member of LPAC to sit on the Economic Improvement Committee.

Councilor Rodden said the committee is meeting like crazy. She asked about their plans to survey the public. The current survey is only three questions.

Mr. Rudman said they will put together a more detailed survey, hopefully by the end of this year or the beginning of next. They will be examining what the best way is to survey the public and get results they can rely on.

Councilor Rodden asked the Councilors to be in touch with LPAC on any issue they feel the committee should look at.

Councilor Breen said CPAC has done professional, random phone call surveys in the past, which are costly. While other committees do not spend this kind of money for surveys, she was in favor of spending the money on a survey to provide statistically significant results, as the work of this committee is so far reaching.

Mr. Rudman said they are mindful of cost, but that may be necessary.

**Item 8                      Discussion regarding draft language of a proposed November 2010 referendum question that will ask voters to approve and fund a project that will convert the Plummer-Motz and Lunt School property into a library, town hall and community center. Formal Council approval of referendum language is required and will be scheduled at a later date.**

Councilor Breen, Chair of the Facilities Committee, said staff has consulted with Bond Counsel and the Finance Director. She discussed which documents make up the specific referendum and which contain boiler plate legal language.

Councilor Rodden asked about the schedule after this meeting.

Councilor Breen said that, if you have a November question, the Council has to agree to the language and send it to the state by a certain time. The last possible time they could approve this and meet that deadline would be the first meeting in September.

Councilor Pierce said they wanted to meet the November referendum because they felt more people would come out to vote in November.

Councilor Chase wasn't in favor of this question going out to referendum. He was looking for some kind of compromise or word from the public sector.

Nathan Poore said that they should be ready with a cost estimate update at the August 9 meeting. The numbers currently in the referendum language are placeholders.

Chair Payne said as it is written, the project cost is \$9.5 million, with a bond of \$4.5 million and the remaining \$5 million to be raised by the sale of town properties. There is a statement that the \$5 million may include the use of the Town's fund balance but not include any tax money. He understood this to mean that they would only raise taxes to

cover the bond and that no money from the town's general fund would cover that \$5 million.

Nathan Poore said this gives them the flexibility to use the undesignated fund balance and prevents them from raising taxes to cover that \$5 million. The fund balance currently stands at \$3.5 million, and they anticipate some gains this year. The appraised value for all the properties came in at \$4.4 million.

Chair Payne thought it was the town's policy to replenish that fund balance over time.

Nathan said a one-time use of the fund balance for capital gains is allowed. It is not okay to use the fund balance to cover the debt payments for two years, for example. The unallocated, undesignated fund balance in excess of what is needed for two months of cash flow is available for them to use. This language is designed to give them the flexibility to use the fund balance; they don't have to.

Councilor Armitage observed that the practice over the last few years has been to include replenishing the fund balance in the budget whenever they have tapped into it, especially on open space.

Nathan Poore said open space was set up so they were borrowing from themselves. They could set this up that way as well, if they wanted to.

Councilor Chase wondered why they didn't bond for the full \$9 million and then not use the entire amount if they were able to sell properties. He was concerned with what would happen if they didn't sell anything.

Councilor Breen said they have to get the voters' permission to spend anything over \$1 million. They don't anticipate having to borrow \$9 million only \$4-5 million. They divided the proposal into phases; the property sales would come before anything else, so that the money all adds up.

Councilor Armitage said it was similar to how the open space question was written. He asked why the language says "not to exceed \$5 million".

Nathan Poore agreed; there shouldn't be a parameter on this number. There are parameters on the total cost and the total amount of the bond.

Councilor Breen thought the reference to "general fund balance" was confusing and should be changed to "undesignated fund balance". She and Councilor Pierce discussed the allowance for the use of this fund balance for a one-time capital expense. Councilor Breen stressed that the goal of the November referendum was twofold: they wanted to capture the largest number of voters possible, and the buildings are going to be empty starting next summer, and they want to minimize the amount of time the buildings are vacant.

Councilor Rodden was starting to think this should be put off until June. There are too many issues that need to be resolved.

Councilor Varney wondered what methods they will use to educate the public on this.

Councilor Pierce said there have been two public forums.

Chair Payne didn't think there were any monies in the budget to go out and educate the public. That is what campaigns are for.

Councilor Breen said no town money can be used on education, because there is no such thing as neutral information.

Councilor Armitage asked how it would work getting design/builds with a developer who wasn't sure if the project was going to go through or not. He wondered about a non-binding referendum question in November that would give them guidance on what they do and then flesh out the details for a June bond question.

Councilor Pierce felt very strongly that it is time to hear whether the public approves of the work that the committee was charged to do. It is a whole other committee to determine what private development might look like. If the referendum fails, it gives them time, while the buildings are still occupied, to come up with other ideas.

Councilor Chase talked about how potential private/public developments on those sites could work, where the town sells the property to a developer for \$1 and the developer includes public uses in the development. He said the design/builds are a deal, and it is at the developers' expense.

Councilor Breen said they have appraisals of the entire site and can make some assumptions based on those. In any scenario they are selling something and then investing the proceeds. In twenty years they will have to spend something on the Town Hall and the Library; the buildings are aging and their infrastructure is weak. The committee has reviewed the demands on the town buildings and has determined that the best "bang for the buck" was to put it all in one place. They have to address what they will do with any income they receive from selling those properties.

Councilor Armitage likes the vision, but he has a hard time with the town spending \$9.5 million, and bonding for \$4.5 million. He had a hard time believing that this is the most cost-effective way of accomplishing the committee's vision. He was interested Councilor Chase's suggestion of a private/public partnership, where you sell the property to a developer for \$1; they develop it and include the community center in the development. This would be at no cost to the town, as private development would do it, and it would add tax revenue. He thought developers would be interested in doing this.

Councilor Breen said the people who showed up at the public forums and answered the surveys have said they would like to keep the entire site in civic use. There are very few historic buildings in town that mean anything to the people who live here. The town has wanted a center, a gathering place, for a long time. It isn't going to happen on Route 1. This site has served as a center for a long time. She understood the public/private development suggestion, but she didn't know how you marry a private housing development to a public community center. The security, parking, hours, maintenance would all be challenges. Moving Town Hall to the site means joint maintenance and increased efficiencies. She agreed that \$4.5 million in this economy is hard, but it will get the town more value over 20 years than if they pay it in small pieces. Buying land to expand the Library would cost \$1 million alone. The choice isn't between spending \$4.5 million now and nothing later. The community will spend this money on facilities over

the next 20 years anyway. At Councilor Armitage's question, she clarified that the 2% tax increase covers both the bond costs and the expected increase in operating costs.

Councilor Varney said the ramp/hallway at Plummer School could be removed. She agreed that the public/private development possibility was not fully explored. She felt the whole town was not fully represented at the public forums.

A cost estimate update will be available on August 9. The amended language could also be presented that night. Nathan Poore said they need 45 days before the election to submit the final language; the first meeting in September allows them enough time to meet that deadline. A public hearing on the final proposed language will take place on August 23.

**Item 9                      Discussion about constructing a rail road crossing that will connect a trail between the Falmouth School Department campus and Community Park.**

Town Manager Nathan Poore explained the aerial photo showing the trail. The bridge over the Piscataqua is not in good shape, and it is illegal to cross the railroad tracks without a designated, designed crossing. There have been many complaints since the bridge was closed, as the trail provides transportation from the school to Community Park. Gorrill-Palmer engineers provided a site location feasibility study for a below-grade crossing. Initial cost estimates for that were just shy of \$1 million so they have asked the engineers to look at an at-grade crossing. He asked the Council if they support the staff moving forward with exploring solutions.

Chair Payne asked if this is the line that is likely to be the passenger, high speed rail service to Brunswick. Mr. Poore said it is.

Councilor Pierce felt connecting these two pieces of land is a good thing, and suggested they approach the school booster groups to help with funding.

Councilor Armitage was in support of exploring options.

Councilor Breen asked staff to investigate any liability issues if the Town implements the crossing.

Councilor Chase didn't think the Railroad intended to listen until they wanted something.

Councilor Varney was in support of either the below grade or at grade proposals.

Councilor Rodden felt the staff should pursue this. The Council needs to consider how much traffic this gets. It is heavily used and should get priority.

Chair Payne felt crossing C, the shortest distance between two points, makes sense. He was concerned with an at-grade crossing. He thought crossing gates and lights come at a remarkably high cost and felt the below-grade crossing would be the safest choice.

Councilor Breen wondered if high-speed rails would require a more firm barrier, walls or fencing, along the sides that would mandate people using the steps of an above-grade crossing instead of walking around them as staff fear they will.

**Item 10**                      **Order to support funding engineering services relative to the River Point Bridge.**

Nathan Poore explained that an engineer had been working with the Town on this issue, but he left for another position. Mr. Poore wants to put this out to bid for engineering services. He thinks it will be more expensive than they thought it would be. The question is if they go out to bid for demolition and abandonment or for renovation/replacement. It has been inspected and is safe now, but it is on its last legs.

Councilor Rodden asked if it could still work for pedestrian traffic. Mr. Poore said no. It needs to be strong enough to hold itself up. It needs to be big enough to get small equipment across it to maintain the property. The property is heavily used for such things as bird watching, hiking, and some small-scale farming.

Councilor Rodden asked if there is other access. Mr. Poore said there is pedestrian access.

Councilor Chase thought they should sell the property, or at least part of it. He wondered if the railroad would be interested in putting a passenger station in there to coincide with the high-speed rail line.

Chair Payne asked if they would be able to preserve their rights if they abandon the bridge.

Mr. Poore said he believed so, but would check with the town attorney.

Chair Payne said that, with the acquisition of open space, they are adding maintenance costs.

Councilor Breen clarified that they didn't buy the property; it was given to them as part of the Exit 10 development. They knew the bridge would need work someday when they were given the property.

Councilor Pierce wondered how this piece connects to other pieces of open space. She liked the idea of a train stop in here.

Mr. Poore said they have already established all the stops. He said that Bob Shafto presented the vision for this property to the Council some years ago. They haven't fully realized this vision because of the bridge.

Councilor Armitage needed more information on the costs for each option.

Mr. Poore thought an at-grade crossing would cost more than replacing the bridge. He understood the Council wanted to hire an engineer to explore both the demolition and/or replacement of the bridge and compare those costs.

Councilor Chase didn't think they could justify spending the money of the bridge. He again stressed his opinion to sell it; the town doesn't have any use for it.

Councilor Breen said the Council passed a resolution not to sell it. They didn't put an easement on it because the open space committee wanted to keep it for mitigation. It is being used for recreation and has enormous archeological value. Any buyer would have the same access problems the Town does.

The Council directed Nathan Poore to hire an engineer to evaluate both scenarios as suggested by Councilor Armitage.

Councilor Rodden asked about the cost. Councilor Armitage said they will have to have the engineering regardless.

Nathan Poore guessed \$10,000-\$30,000, but that is a broad estimate. He is looking for a concept design with some cost estimating.

**Item 11                      Introduction by Councilor Chase for an amendment to the Zoning and Site Review Ordinance regarding the Resource Conservation Overlay District and Net Buildable Area.**

Councilor Chase introduced the proposed amendments.

Councilor Rodden moved to refer these amendments to the CDC. Councilor Breen seconded.

Nathan said Councilor Chase would have to withdraw his introduction to do that; it is his right to move it to public hearing.

Councilor Chase said he would not pursue it, if the Council wanted it to go to CDC.

Councilor Breen wanted to know more about this, and the best way to do that is for CDC to review it.

Nathan Poore said it is an automatic process for this to move to public hearing, unless Councilor Chase asks the Town Clerk to remove it. After the public hearing, the Council has authority to send it to committee.

Councilor Pierce would also like to understand it more and supported sending it to committee.

Councilor Varney supported sending it to public hearing.

Councilor Rodden wanted to move it to committee to understand it better, not to kill it.

A public hearing will be held.

**Item 12                      Discussion of referral of certain zoning amendments to the Ordinance Committee.**

At a prior meeting, certain amendments were sent to the ordinance committee. According to Council rules, the CDC committee is the proper place for review of land use amendments.

Councilor Rodden said the CDC could review these items at their August 4 meeting. Councilor Pierce confirmed that the workload of the CDC is fine.

Councilor Rodden moved to assign these amendments to the CDC. Councilor Varney seconded.

Nathan clarified that this is a procedural motion and not an order requiring formal posting.

Councilor Chase expressed his support for the proposal from TideSmart regarding the signs at the entrance to the property and the stone walls. He would like to see this completed in 30-60 days, as the developer will then have to go to the Planning Board.

Councilor Breen thought the project is lovely, but the steps that apply to this project are the same steps that apply to everyone.

Motion carried 7-0.

**Item 13                    Order to vote for MMA Vice President and Executive Committee members.**

Councilor Armitage asked Nathan Poore for his input on the two candidates for vice-president.

Nathan said he has worked with Clinton Deschene once in a while but is not personally familiar with Sophia Wilson.

Councilor Breen moved that the Council abstain from voting. There was no second.

Councilor Armitage moved to abstain from voting. Councilor Breen seconded. Motion carried 5-2 (Payne, Varney).

**Item 14                    Order to go into Executive Session pursuant to the Laws of Maine to discuss the possible sale of town owned land, pursuant 1 M.R.S.A. § 405 (6) (C).**

Councilor Breen moved to enter executive session. Councilor Armitage seconded.

Nathan Poore said he did not anticipate any Council action, and recommended ending the public portion of the meeting.

Motion carried 7-0.

Meeting adjourned.

Respectfully submitted,

Melissa Tryon  
Recording Secretary