

**Town Council Special Meeting and Workshop  
Minutes  
November 8, 2010**

**Roll Call**

All Councilors were present.

**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).**

**Item 2                    Review the Greater Portland Transportation District's, A.K.A  
(Workshop)            METRO, proposed preliminary budget and municipal subsidy formula.**

Chair Payne explained that METRO is required by statute to submit the preliminary budget and municipal subsidy formula no later than October 31 and the Town has 30 days to reject the proposed formula.

Town Manager Poore explained that the net impact on local subsidy was a .5% increase, or \$800.

Councilor Rodden spoke about the discussions around changing bus routes. METRO may be cutting four trips to West Falmouth; there would be 15 trips remaining. That wouldn't take effect until January, and there will be a lot of notice.

**Item 3                    Order to consider an amendment to the Zoning and Site Plan Review Ordinance to change how recreational vehicles and boats are stored.**

Councilor Rodden reported on the discussions at the CDC. They felt that this amendment only benefitted one member of the community.

There was no motion made on the order.

**Item 4                    Update on FEMA process for Proposed Flood Maps.  
(Workshop)**

Amanda Stearns, Community Development Director, explained the history of the FEMA process to date. The former process has been repealed and the new process, known as risk map, is being rolled out. Communities will be invited to participate; eventually that would require entering into an agreement, known as a charter, agreeing to the process and what the elements of that process will be. Draft charter language is not yet available. This new process may allow the Town to more comprehensively study the report prepared by Bob Gerber in regard to the coastal flood areas. Also, the map modernization process in Falmouth did not take into account the removal of the Small Hill Dam in 2002 and its impact on the Presumpscot River Watershed. This new process will give the Town the opportunity to work with FEMA to see if some adjustments need to be made to the inland flooding areas. The main elements of the program would be review of the data that has already been prepared, perhaps do some additional modernization of some of

the data (old data with updated topography was used for Falmouth), public outreach and education, an enhanced digital platform for the maps so that it could be incorporated with Falmouth's GIS data, and a more global outlook on emergency management and planning for flooding. It was announced that the deadline for executing the charter will be January 31. FEMA has assured staff that no cost for the risk map program will be borne by the communities.

Councilor Rodden asked about any impact this more sophisticated technology will have on the coast of Falmouth. She wondered if it was likely that more properties will be in the flood zone.

Ms. Stearns didn't know; it's a matter of seeing what the data produces. There will be a collaborative review process with FEMA.

Councilor Rodden asked if FEMA is including higher water levels from global warming.

Ms. Stearns said she didn't know yet, but it was a question she would be asking FEMA.

Councilor Varney asked about Highland Lake.

Ms. Stearns said all of Cumberland County is included; that will be included as well.

Chair Payne asked about the impact on property owners to use their land.

Ms. Stearns said it would depend on the V-zone, or velocity zone, the property was in. These have construction standards attached to them; most of them are about construction materials and setbacks. Each community gets to make some of those.

**Item 5                      Order to approve a Consent Agreement for a mislocated single family dwelling at 2 Inverness Road.**

Ms. Stearns explained that the property was granted their appeal at the Board of Zoning Appeals (BZA). The building permit for the house was granted in 1988; on the permit it was indicated that the house would meet the setbacks. She explained how she calculated the penalty amount of \$3,820 as outlined in the staff memo provided. The Council has the discretion to determine any final penalty.

Councilor Breen asked for confirmation that this process is because there is no other reasonable resolution.

Ms. Stearns said that was correct. She reviewed the history and layout of the property. The BZA agreed with the lot owners' position that adjusting the lot line with the abutter was not a reasonable resolution in this case, and the only other option would be to tear down the encroaching corner of the building.

Chair Payne asked if the BZA was recommending the penalty.

Ms. Stearns said the BZA only judges the appeal, and does not comment on the penalty. Their position is to grant the consent agreement.

Bob Danielson, an attorney representing Steve Willis the property owner, asked the Council to grant the consent agreement. He explained that there is a triangular portion of the building from the foundation to the roof that sits within the setback. The owner had a contractor build the home in 1989 and he believed it was within the setback. He put his home on the market, and a week before the closing on his home it was discovered that the house was within the setback. He argued against the size of the calculated penalty.

Councilor Varney asked why they hadn't investigated purchasing more land.

Mr. Danielson explained that Mr. Willis' lot is part of the Falmouth Country club subdivision. If his lot was changed it would require a subdivision change. Also, the abutter's property is for sale right now and he felt it unlikely that the abutter would be willing to sell.

Councilor Rodden asked what they have done in the past with these requests.

Ms. Stearns said each of these situations have been very different. She didn't have those specific numbers in front of her, but in each instance a penalty has been assessed. The Council has addressed each case individually.

Councilor Chase thought if the property owner made an adjustment with the abutter that would count as their one adjustment allowed under the RCZO without going to subdivision.

Councilor Chase moved to accept the consent agreement, and ask the applicant to pay only the necessary legal fees to draw up the agreement. There was no second.

Chair Payne asked the rationale for the penalty amount that is based on the time from 1965 to the construction of the building.

Ms. Stearns said the thinking is that the newer the building, the better the technology to measure the boundaries of the lot, the more the builder should have known better and the more likely the current property owner would be aware of and responsible for the violation. The newer the violation, the more the penalty should be. Zoning was enacted in 1965 and the setbacks have been in place since 1972.

Councilor Armitage moved to accept the consent agreement with a penalty of \$1,520 along with the Town's legal expenses. Councilor Varney seconded.

Councilor Breen asked if the Town had incurred any legal expenses at this point.

Ms. Stearns said the consent agreement is a standard agreement, and she hadn't needed any legal help to date. She didn't anticipate any legal fees to come either.

Motion carried 7-0.

## **Item 6**

**The Council will discuss the Community Facilities project and:**

- consider a draft resolution regarding the space needs of the Falmouth Memorial Library,**
- review the space needs for a Falmouth Community Recreation Center**
- review a draft Request for Qualifications for Developers, and**
- determine its next steps in the Community Facilities Process.**

Chair Payne read the proposed resolution.

Councilor Rodden moved to waive Council rules in order to allow the public to comment on all items contained in this agenda item. Councilor Breen seconded.

The Council discussed the location and time limits of the public comment period. They agreed to limit public comment to 5 minutes for each person.

Motion carried 7-0.

Lucky D'Ascanio, Community Programs Director, made a presentation on the need for a Community Center. There are three concepts for space needs in Falmouth: the minimum recommendation was for 8,000 sq feet, the second recommendation included a gym and came to 18,065 sq feet, and the third included a gym and pool and came to 38,065 sq feet. The Rotary Club is still interested in working cooperatively on a community center. She spoke about other towns in the area without community centers and what spaces they use for their programs. She presented details on community centers in different area communities, including whether they had a pool.

Councilor Varney asked the size of Mason Gym.

Ms. D'Ascanio said it is about 3,400 sq. feet for just the gym; all together with the kitchen and office it is roughly 5,000 sq. feet.

Councilor Varney asked how many rooms are envisioned for the meeting space.

Ms. D'Ascanio said they based it on 4 classroom sized rooms that could be multi-use classrooms, including dance and lecture type programs.

Chair Payne asked about funding for the programs; the participants pick up approximately half the cost, with state subsidy and the Town paying for the rest. For recreation programs, the participant picks up 90% of the cost.

Ms. D'Ascanio said that was correct.

Chair Payne asked about adding new programs and how the costs would be covered; he wondered if that would add operating costs to the Town.

Ms. D'Ascanio said no, because the more programs they do the less the cost to the Town, due to fixed overhead. They only have 4 staff.

Councilor Chase asked what they want to do with Community Programs.

Ms. D'Ascanio said they want to provide the best program they can, and be able to take advantage of opportunities to improve the programs they provide.

Councilor Chase asked if she wanted to move to Motz.

Ms. D'Ascanio thought it would be a logical move.

Councilor Rodden asked about the Rotary Club proposal.

Town Manager Nathan Poore said there are no details, other than that they are still interested.

Chair Payne asked about other communities' level of program utilization.

Ms. D'Ascanio said it was hard to say, but she felt that they are similar to Falmouth's.

Councilor Breen said that these programs are always tweaking what they provide, based on feedback from their participants, in order to keep up their enrollment.

Ms. D'Ascanio said they also advertise offerings in the regional communities, to help each other out. They are always checking what is working regionally and what isn't.

Councilor Rodden asked how many people from Falmouth are going to other communities to use their programs.

Ms. D'Ascanio didn't know, but she thought she could double-check. Usually people go to other communities for a one shot class or a trip, and not a 10-week class.

Theo Holtwijk, Director of Long-range Planning, looked at the floor plan of the Motz building in answer to Councilor Varney's questions. The Mason Gym is approximately 4,000 sq feet.

Councilor Breen asked how frequently it happens that they have instructors that would like to offer a class but can't due to a lack of space.

Ms. D'Ascanio thought it was between one and two per year. They try to work with those instructors and modify what they want to offer to try and fit it somewhere. They don't like to say no to people.

Councilor Chase asked about the bus.

Ms. D'Ascanio said Falmouth Community Programs owns a 15 passenger bus and a 15 passenger van.

Chair Payne asked about the state funding.

Ms. D'Ascanio hadn't heard anything yet, but she didn't anticipate any changes this year.

Councilor Rodden asked if there was any plan for an inside walking track in any of these concepts.

Ms. D'Ascanio thought Concept B could include a walking track. It is a full sized gymnasium.

Chair Payne asked the Council to review the RFQ process.

Mr. Poore gave an update. They have three meetings set up with local developers to review the draft RFQ for their input, and they will have some more information at either the December 13 or November 22 meeting.

The Council discussed the next steps in the process. Mr. Holtwijk said if the Council feels it is ready, staff could begin to draft a document about space needs for community programs. Mr. Poore said there will be some more reports delivered from the library, along with concept layouts, that will be available for discussion, probably at the December 13 meeting. A report on the town office will be available for discussion on November 22, along with a discussion of the library inventory.

Councilor Breen thought they will need some cost information soon in order to narrow the discussion. She asked if those will be available for December 13.

Julie Rabinowitz, vice-president of the Library Board of Trustees, said the presentation by Jim Thibodeau would be on the existing library report, the two reports he just completed on the Lunt and Plummer buildings, along with some cost information from the Barba and Wheelock report as well as from Mr. Thibodeau. These cost numbers are based on the concept layouts, and not on final plans.

Councilor Pierce wondered if they could tie in some of the cost analyses that were done as a part of the community facilities process.

Chair Payne wanted to focus on the space needs, then the location, and then the cost and the timeframe.

Councilor Breen wondered how they make a decision on location without knowing the cost.

Chair Payne thought the decision of location was more dependent on land use discussion, where it would best be located according to the comprehensive plan.

Councilor Breen felt there were a variety of factors that come up as costs and benefits. She didn't feel she could make an informed decision based solely on a land-use planning/comp planning basis. She needed cost information as well.

Mr. Holtwijk remarked that this was part of the planned process further down the road. The criteria identified as part of the discussion on location include costs. This discussion is currently scheduled for January.

Mr. Poore said they would have the best available, meaningful cost information on December 13.

Councilor Pierce thought the discussions about locations for both the Library and the Community Center should be at the same meeting.

The Council discussed the resolution regarding the space needs for the Falmouth Memorial Library.

Ms. Rabinowitz said the Library Board of Trustees unanimously accepted Mr. Lushington's report and his addendum. These recommendations were for a minimum of 5,000 sq feet at a five year projection, and 12,000 for a 20 year projection. The Trustees unanimously recommended some changes to the draft resolution, which were incorporated into the current draft version. They have said that whatever space amount and floor plan are finally adopted, they strongly request that the space be flexible and adaptable to accommodate a variety of uses. They also want to have a location that would allow an addition later on. All the options are on the table for the Trustees regarding location. Once the determination is made on the space needs, they can begin to breakdown the pros and cons for each possible location. They encouraged the Council to adopt the resolution.

Chair Payne opened a public comment period.

Mike Doyle of Shady Lane spoke about the meeting on October 25. He felt the public option for development at the school site has driven the discussion for the last two years. He felt they were trying to do too many things concurrently. He asked if they will disclose the costs of the project on the ballot, along with the ongoing costs for more staff and overhead for these facilities.

Lisa Preney of Middle Road is the cofounder of the Falmouth Citizens for Sound Choices group. She didn't know how they were going to vote on a resolution tonight when so much information is still coming in from the Library. She asked about the use numbers that have been published. She couldn't figure out how they are servicing 50 people per hour. Mr. Lushington said he was uncomfortable predicting the future of libraries further than five years out. She read from an article about e-book technologies. She asked why Mr. Lucker's report was ignored in the resolution. She felt the library needs something between the recommendations of Mr. Lushington and Mr. Lucker for space. Mr. Lucker thought the current location of the library is pretty good, better than the school site. She urged caution; libraries ten years from now won't look anything like they do today.

John Winslow of Gray Road visited the library 8 times over the past few weeks and counted cars and people at the library while he was there. He was unable to support many of Mr. Lushington's findings. The report stated there were 50 visits and 78 items checked out every operating hour. He felt the report lacked credible supporting data. He felt they could track use by cardholder. He

wondered why there wasn't a use fee for the library, similar to that for parking at Town Landing or the pay-to-play fee at the schools.

Marna Miller felt the difficulty with the concern about how technology will affect the library is that we tend to assume that it is going to have one kind of effect, i.e. that e-books will replace bound books. The data that she has read indicated that that is not necessarily true. We don't know how it will affect us. She quoted two studies that indicated that just because people are comfortable with an e-book reader doesn't mean they prefer them, including one study that was done on tech-savvy college students. She wondered if the library will need more space for regular books along with access to e-books. She said she works from home and needs the library for her job; she felt the future increase on people working from home would increase the use of the library. She urged the Council to support appropriate expansion of the library into the Lunt School building.

Marsha Clark was representing a diverse group of citizens interested in preserving the land at the school site. She was on the Facilities Committee. People are concerned that the Council doesn't fully understand the extent to which citizens support the continued civic use of the school property. There was a petition at the polls in order to quantify that support. She read the language of the petition. The message of the petition was that those who signed it want to see the buildings and a majority of the property kept in civic use and they want to vote on a civic use proposal put forth by the Council. Over 1,100 signatures are on the petition, representing a cross-section of the citizenry of Falmouth. These buildings are part of Falmouth's heritage. They will never have this opportunity again. These are great buildings. She presented the signed petition to the Council.

Brian Preney of Middle Road loves the Library and felt it should stay as it is and where it is, with maybe a modest addition that would fit into their budget. He helped with the petition drive set up by Falmouth Citizens for Sound Choices, and said that 80-90% of the people he talked to signed it. He felt they could have had more signatures if they had kept going and had more time. The Town abandoned the old school building to build a very expensive elementary school because those old buildings need expensive renovations. He said Ms. Clark's petition had 1,100 signatures out of the 5,500 people that came to vote. This is only 20%, leaving 80% who chose not to sign it.

Fred Leighton thought a lot of this is coming down to dollars and cents. He spoke about research they did when he was a Councilor about community centers and pools. He didn't think they could afford not to do this. The opportunity is here now; they should think what it would cost them if they decide to do it 5-10 years down the road. He wondered why they couldn't do a long-term plan. Everyone can benefit from a community center. They can afford it if they want to.

Chair Payne closed the public comment period.

The Council debated the resolution.

Councilor Breen moved to accept the joint resolution dated November 4, 2010; Councilor Pierce seconded.

Councilor Varney was bothered that there was nowhere stated in the resolution that Mr. Lushington was uncomfortable predicting anything beyond 5 years out.

Chair Payne felt the resolution reflects Mr. Lushington's recommendations at the 5 and 20 year points; the 20 year recommendation was at the request of Councilor Rodden.

Councilor Armitage didn't dispute that the library needs more space, but he didn't want numbers in the resolution. He wasn't clear how they got to the numbers in the resolution, as they don't seem to tie out to the Lushington report. He also didn't see the need for this resolution, as he felt they all agree that the library could stand some additional space. He didn't want to get locked into a number for the square footage. He asked how they got to these numbers.

Mr. Holtwijk said the numbers of 6,500-9,000 sq. feet come from the Lushington report and he identified the source. He explained how he came to the numbers in the resolution for both assignable and non-assignable space. He thought it would be helpful for the Council to see the total building area, which the consultant didn't want to do as he felt it would be dependent on location. He thought they should treat all these numbers with some flexibility.

Councilor Chase agreed with Councilor Armitage. He felt Mr. Lushington was trying to be conservative. He felt discussing assignable vs. non-assignable space confused the issue; they should focus on square feet. He felt it all comes down to money.

Councilor Rodden clarified that what she and Councilor Breen requested of Mr. Lushington, who made it very clear that he was being conservative and taking into consideration the economy and politics, was that he not consider those two elements; that was the responsibility of the Council when they got to the discussion of location. The first thing they are supposed to do in their process is come up with a number, and she felt the Library is waiting for them to do that.

Chair Payne agreed with Councilors Chase and Armitage, but he also agreed that they need to put something on the table. He agreed they need space for the library; the question is how much, where it is located, when they do it and who foots the bill, not only of the expansion but also the operating costs. The Library is a stand-alone, non-profit entity that the Town chooses to support. The dialogue is what they can mutually afford, and who is going to pay for it. He is going to err on the side of caution as to the amount of space, in consideration of the current economy.

Councilor Armitage was comfortable with Mr. Lushington's original recommendation for assignable space. His recommendation was to strike the section of the resolution that refers to the numbers discussed. He also recommended striking the second, third and fourth resolves.

Councilor Breen felt one of the goals was to get an agreement between the Trustees and the Council. The purpose of this resolution was to state that agreement. Her concern was that if they leave out those section, they really haven't resolved to agree with the Library on what they have stated are their space needs.

Councilor Armitage wasn't sure they have agreed on those needs, since they have these ranges.

Councilor Pierce thought they have to have some resolve in order to move them forward. She thought the range gives them some flexibility. At the end of the day, the voters will decide this. These numbers came from systematic work by experts and give them a framework from which to move forward.

Chair Payne agreed that this was how they wanted the process to move forward.

Councilor Chase was in support of the Lushington five year recommendation.

Chair Payne agreed with Councilor Chase. He supported a smaller range. He wondered about the source of the data for the 140,000 visits a year.



Ms. Rabinowitz said there is a door counter and it includes people attending meetings, using the computers, etc. Circulation reflects items checked out, including inter-library loan.

Councilor Pierce would rather retain the range; if not, she wanted to add that the five-year recommendation was a “minimum”.

Councilor Breen moved to strike the language “*BE IT FURTHER RESOLVED, that the Town Council determined that the Falmouth Memorial Library has a minimum need for a building of 17,300 gross square feet and a maximum need for a building of 23,500 gross square feet; and*” from the resolution. Councilor Pierce seconded. Motion carried 4-3 (Chase, Payne, Varney opposed).

Councilor Armitage moved to amend the resolution language as follows (additions in red, deletions in strikethrough). “*BE IT FURTHER RESOLVED, that the Town Council determined that a minimum total assignable floor area ranges of 12,910 square feet between a minimum of 13,000 and a maximum of 15,300 square feet, for a five year and twenty year planning horizon; respectively; and*”. Councilor Breen seconded. Motion carried 5-2 (Rodden, Chase opposed).

Councilor Pierce called the question of the original motion.

Amended resolution adopted 5-1 (Chase opposed).

Chair Payne asked if a program that is added to Community Programs pays for itself.

Ms. D’Ascanio said that is the hope; that it pays for itself and its associated administrative costs.

Chair Payne asked if the cost of adding additional space is just the overhead of the space itself.

Ms. D’Ascanio said yes; eventually the cost of the programs could be adjusted to cover some of those costs as well. They have done some of that in the past.

Mr. Poore thought it would take more research to truly answer that question.

Councilor Breen pointed out that they can also rent out the space.

The Council was in agreement that staff should move forward drafting a resolution on the community center.

**Item 7  
(Workshop)                      Discussion about the potential development of an amendment to the Coastal Waters Ordinance that would reduce shore front property lot width requirements for riparian rights designation; allow riparian rights to lots with waterfront access rights; and allow 20 additional moorings at Handy Boat.**

Mr. Poore explained that there are four ways to get a mooring in Falmouth: Town Landing, Handy Boat, the Yacht Club and riparian rights. Towns have home rule to determine how much water frontage is required to get a mooring through riparian rights. The Town ordinance requires 100 feet, but there are some people in town who have moorings with less frontage than that. Staff has suggested an ordinance amendment to be in line with past practice with a cap of 250 moorings to prevent any problems in the future. At Councilor Breen’s question, Mr. Poore said this does not include the Presumpscot River.

Al Twombly, Harbormaster, said the river is a separate issue; he didn’t feel that it is all that desirable a location. State law sets a guideline for these rights but the Town has home rule.

Chair Payne asked if there is any state oversight of river vs. ocean moorings.

Officer Twombly said there is not.

Mr. Poore pointed out that they would wrap in the request for 20 additional moorings into this ordinance amendment, if the Council agrees in concept.

Councilor Rodden asked the opinion of the Harbor Committee.

Officer Twombly said they are supportive of the Handy Boat request; they have not yet been consulted on the whole thing.

Councilor Chase is the liaison to that committee, and he felt they would be very much in support of it.

Mr. Poore clarified that anyone along the Presumpscot will have the same rights as someone along the ocean.

**Item 8                      Resolution to accept a grant from the State of Maine for the acquisition of Open Space properties.**

Councilor Breen moved to adopt the resolution; Councilor Rodden seconded.

Chair Payne said this resolution concerns a parcel in Town referred to as Dictar II.

Motion carried 7-0.

**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).**

Councilor Pierce moved to approve a hardship abatement of taxes in the amount of \$500 for the 2008 real estate property taxes for lot U41-023 and to authorize the Town Manager to execute a waiver of foreclosure for the tax lien mortgage. Councilor Breen seconded. Motion carried 7-0.

**Item 9                      Discussion about future Council agendas**

Mr. Poore discussed the upcoming agendas.

**Adjourn**

Councilor Breen moved to adjourn; Councilor Pierce seconded. Motion carried 7-0.

Respectfully submitted,

Melissa Tryon  
Recording Secretary