

**Town Council Meeting
Minutes
October 24, 2011**

Roll Call

Councilors Chase, Rodden, Payne, Varney, and Orestis were present and answering roll call. Councilors Pierce and Armitage were absent.

Pledge of Allegiance

Vice-Chair Varney led those present in the pledge of allegiance.

Public Forum

Councilor Orestis spoke as a member of the public to acknowledge Gunnar Hubbard of Fore Solutions, recently named one of the top 10 people impacting Maine's economy.

Mike Doyle of Shady Lane has been a resident of Falmouth for 31 years. He predicted that the Al Farris case would be lost by the Town.

**Item 1 (a) Order to approve the minutes of the September 12, 2011, Town
(Consent Agenda) Council Special Meeting and Workshop.**

**Item 1 (b) Order to approve the minutes of the September 26, 2011, Town
(Consent Agenda) Council Meeting.**

Councilor Payne moved the consent agenda; Councilor Rodden seconded. Motion carried 5-0.

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

Councilor Rodden reported that ecomaine is asking for submission of nominees for eco-excellence awards.

Councilor Payne reported that the CDC has been working on the Route 1 rezoning task. They are making good progress and hope to come to the Council soon with some recommendations. They have also discussed farm stands in residential zones.

Councilor Orestis reported on recent School Board meetings. The grand opening of the new school was a great event, and very well attended. Enrollment is up 50 students this year. The wood chip boiler at the middle school is in the early stages – they are discussing the best location. A few new policies were passed recently, and those are posted on the school's website. The school sports teams have done or are doing very well this year.

Vice-Chair Varney said that there has been some turnover in personnel at the library; Lyn Sudlow is retiring at the end of the year. Last week, during maintenance on pipes in the attic, there was a large flood at the library, forcing it to close for a few days. The library has now re-opened. Some of the books are still being evaluated for damage. She will be meeting with the Trails Advisory Committee soon.

Councilor Rodden asked if the library had estimated how much monetary damage was done.

Vice-Chair Varney said they did not lose any computers and they do not have an estimate on the damage yet. Most of it is covered by insurance. Some of the sheetrock and ceiling tiles have already been replaced.

Town Manager Nathan Poore said staff will be meeting with FTAC soon to discuss their role in land management.

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

Councilor Payne said the Appointments Committee had nothing to report.

Item 4 Request from the Board of Zoning Appeals to consider amendments to the Zoning Ordinance regarding the administration of Section 8.3.e.

Jay Meyer, chairman of the Board of Zoning Appeals (BZA), said the Board has experienced difficulties in the last few years in applying this section of the ordinance. This section applies primarily to additions or enlargements to single-family homes and the language states that “*the petitioner shall submit to the Board statements in writing...demonstrating that the proposed use... will not have a significant adverse impact on water views from adjacent and nearby properties and public right of ways; [Adopted 7/24/06]*”. The BZA has heard 36 applications under this ordinance since its adoption: 26 were approved outright; 4 were approved either at subsequent meetings or with conditions; and 6 were denied (17%). That is a higher denial rate than is typical. The problem is the lack of specificity with the term “significant”. He discussed three examples of applications with which the BZA struggled as a result of this language. Typically the owner argues that the impact will be small, representing a small slice of the neighbors’ water view, while the neighbor, sometimes accompanied by friends and relatives, often argues that they bought a property with water views and the loss of them will impact the value of their property. The BZA does not have guidance on how significant the impact has to be in order to prevent the enlargement. They feel that this language is sufficiently vague that they need additional guidance from the Council. Their position is that this section should either be revised or repealed. He discussed the three proposals submitted to the Council. Board member Don Russell has suggested a mathematical approach of analyzing significance, including specific percentages of the view that is being blocked, limiting the number of perspectives, and having specific evidentiary requirements. Board member Jon Berry has submitted a proposal for a definition of significance, drawn from a state statute that concerns wind turbines, which lists specific factors. Mr. Meyer has submitted a proposal that includes a list of different factors to consider, including scenic value and seasonal impact.

Councilor Orestis asked about the impact of repealing the ordinance.

Mr. Meyer said there are other portions of section 8.3 that would allow the Board to consider the same issues. Other criteria direct the BZA to consider the impact on property values, for example.

Councilor Rodden recused herself from this matter, as she lives on the waterfront.

Councilor Payne asked what constituted a “scenic” view.

Mr. Meyer thought most people could agree on most types of scenic views, but agreed that it is a bit subjective. The BZA has not discussed a specific definition of scenic as they still looking for additional specificity on significance. The term “scenic view” is present in ordinances from other waterfront municipalities in the state, and he hasn’t found much evidence that the term caused much controversy.

Councilor Payne was concerned that the change in language could be used to block any construction in these neighborhoods.

Mr. Meyer spoke about the Traynor application, in which the family withdrew their application for an additional story on their home in the face of stiff opposition and instead went with a single-story addition to the home instead.

Councilor Chase commended the BZA for doing a tough job; he would like to help make their job easier. He observed that those who own the property out front deserved some consideration.

Mr. Meyer observed that, while these cases all concerned existing homes, it could be the case that someone wanted to build something new in front of someone else. It isn’t only the case that the front owner came first. He stated that BZA member Willie Audet has stated that this ordinance amounts to a regulatory taking; in essence the property owners in back have what amounts to a view easement without having to pay for it.

BZA member Don Russell said he worked on his proposal with the former Code Enforcement Officer. He was concerned with the neighbors packing the meetings with friends and relatives to protest applications. He spoke about an application at 20 Burgess St, in which the residents simply gave up and moved away, in the face of opposition to their proposal.

Councilor Orestis stated that he lived on Ayers Court for 6 years. 2 ½ years ago he applied to add on to his home and his neighbors turned out in numbers to oppose his application. His application was denied. They then sold their house and moved away.

BZA member Jon Berry said his opposition to this portion of the code is because of the level of acrimony this one provision causes. People come before the BZA without any idea of what is expected of them on this issue or that it might be offensive to their neighbors. He spoke about his suggested changes to the ordinance which are based on language from state statute and matters that have been tried in court. He is suggesting an addition to the definitions section.

Councilor Chase wondered what percentage of the applications the BZA hears are on the water.

Mr. Meyer estimated 15-20%, but said that was just a guess. He clarified that the Traynor’s withdrew their application; the Board did not vote it down. He said 8.3.d states that an

application “*will not have a significant adverse effect on adjacent or nearby property values*”, which language could be used as a substitute for the protections in 8.3.e.

At Councilor Payne’s request, Mr. Poore recommended that, if there was interest from the Council to pursue this, they could send it to the CDC for review.

The consensus of the Council was to send it to the CDC.

Item 5 Introduction of a zoning ordinance amendment to standardize restrictions for keeping poultry in residential districts.

Councilor Rodden introduced the amendment.

Amanda Stearns, Community Development Director, explained that the current ordinances regulating the keeping of poultry were amended three years ago to allow poultry, with strict standards on waste removal, setbacks, fencing, etc., in the RA and RC districts. These amendments did not affect the other zoning districts in Town. The proposed amendment would impose those same standards in RB, VMU and Farm and Forest Districts on lots of less than 40,000 sq. ft.

A public hearing was scheduled for November 14.

Item 6 Order regarding the “Call for Offer” process associated with the redevelopment and future use of the Plummer-Motz and Lunt school site to classify responses as confidential for a specific time period.

Mr. Poore explained that, at the last meeting, the Council directed staff to draft an order so that the process moving forward is clear for both staff and the public.

Councilor Payne moved the order; Councilor Rodden seconded.

Vice-Chair Varney opened a public comment period; there was no public comment.

Councilors Chase and Rodden were in support of the process. Councilor Rodden wanted to make sure that the public hearing was held separate from the order. She asked for at least two weeks between the two. Councilor Orestis agreed with that request.

Motion carried 5-0.

Item 7 Discussion about rail road crossings along the Pan Am Railways line and the impact on neighborhoods from train whistles.

Mr. Poore said staff has done more analysis since the meeting in Cumberland regarding the intersections at Falmouth Rd. and Blackstrap Rd. They looked at doing an alternative design at those two crossings, including making Davis Farm Rd. into a one-way road. With these changes they brought the formulas down below the threshold. The costs also came down, from \$239,000 for all 4 crossings, to between \$70,000-127,000. This is mainly due to not relocating Leighton Rd. They have run this design by the Federal Rail Authority (FRA) and they were satisfied with this. The Council needs to know determine its next steps. If they wish to proceed with these

changes, they could vote on a supplemental appropriation and take the monies from fund balance and make it available in this budget year. He advised the Council to hold a public hearing on this issue before any vote.

Councilor Chase asked about the proposed speed of the passenger trains.

Mr. Poore said 60 MPH. He didn't know if they could guarantee that it would always be that speed, with upgrades to equipment or rail.

Councilor Chase asked if the "44% more accidents without the whistle" statistic was measured before improvements or after.

Mr. Poore said that was before improvements.

Theo Holtwijk, Long-range Planning Director, said that figure compared an intersection with standard improvements, with gates and flashing lights, with and without a whistle.

Councilor Chase has seen people get killed on those tracks. He was concerned about safety without the whistles. He said they needed a public hearing. Councilor Orestis agreed.

Councilor Rodden was confused about the improvements having been scaled down so much, and the FRA approving them.

Mr. Poore explained that there are specific standards; it is similar to a permit-by-rule. The Town meets the standards at Field and Woodville and that is enough to carry a quiet zone for all 4 crossings. Mr. Poore didn't feel it was right to avoid doing improvements to Falmouth and Blackstrap based on a technicality. The FRA will not approve those improvements because the Town won't bother to submit them. If the Town can get Davis Farm Rd. changed to a one-way street, then Blackstrap Rd. would meet those standards as well. He spoke about the situation with Leighton Rd. and Falmouth Rd. and how they would install the delineators. If the Council wanted to look at another option, they could consider the Wayside Horn, which is a horn that is situated at the intersection.

Councilor Chase said the railroad could make the gates longer to block both lanes. They could move the power lines overhead so they were not in the way.

Mr. Poore said staff hasn't evaluated long gates because they haven't been presented as an option. The quad gate system is what was presented to them. Staff will look into it.

Councilor Rodden would like to see the safest thing they can come up with at this intersection for the least amount of money. She felt they should look at this intersection in a fresh way, since they don't need it to qualify for the quiet zone.

Councilor Payne thought they should prepare for possible future expansion of service. He was in favor of getting it done at the lowest possible cost. He wanted a public hearing.

At Councilor Rodden's question Mr. Poore confirmed that, if Falmouth and Cumberland both improve the roads on either side, Birkdale Rd. would not have to install any improvements for the quiet zone.

A public hearing was scheduled for November 28.

Mr. Poore explained that the estimates had gone up since the last meeting because they are now recommending the installation of a full median in the street instead of a plastic composite curb.

Item 8 Public Hearing on an amendment to the Code of Ordinances to prohibit the use and sale of consumer fireworks.

Vice-Chair Varney opened the public hearing; there was no public comment.

Councilor Chase said fireworks are dangerous. He said the Town has to vote to ban them; they can't be the only town in the area to allow them.

An order was scheduled for November 14.

Item 9 Order to adopt changes to the Falmouth Cable TV Mission Statement and Usage Policies.

Councilor Rodden moved to remove the item from the table; Councilor Payne seconded. Motion carried 5-0.

At Councilor Payne's question, Mr. Poore clarified that this was just the Town's cable operations.

Councilor Payne was satisfied that, with these changes, they have met the objectives for allowing public discourse on public issues on the community channel.

At Councilor Rodden's request, Mr. Poore explained those instances when use by the public would not be allowed. It pretty much reflects what was done this past June.

Councilor Payne moved the order; Councilor Rodden seconded. Motion carried 5-0.

**FALMOUTH COMMUNITY TELEVISION CHANNEL 2
TOWN OF FALMOUTH, MAINE
Mission Statement and Usage Policies**

Section 1. Mission.

Falmouth Community Television Channel 2 (FCTC2) is operated by the Town of Falmouth, Maine, as a governmental/educational channel. The mission of FCTC2 is to make local government more accessible to Falmouth residents by providing a direct link between local government and the cable television network. This will promote exposure and access to Town government and further government accountability to the residents. FCTC2 will also allow Town government to access the cable network for training, data transmission and other information exchanges and to provide residents with educational programming.

Section 2. Programming Priorities.

To further its mission, FCTC2's activities will include, but not be limited to, the following prioritized programming and services:

- a. Urgent information and instructions during disasters and other emergencies;

- b. Public meetings of Town and School Department bodies, such as the Town Council, Planning Board, Zoning Board of Appeals and School Board and schedule information for these meetings;
- c. Programs regarding Town services;
- d. Community TV Bulletin Board;
- e. Information regarding important community events sponsored by the Town, School Department, or non-profit groups and quasi-governmental organizations in partnership with the Town or School Department;
- f. Reports to residents from elected and appointed public officials;
- g. Events originating from the Falmouth School Department such as athletic events, concerts, plays and ceremonies;
- h. Cultural and educational productions and State government meetings of special local interest.

Section 3. Station Manager.

The FCTC2 Station Manager is appointed by the Town Manager and is the principal contact person for FCTC2 matters. The Station Manager is responsible for:

- a. Maintaining and controlling the use of the facilities and equipment;
- b. Developing and publicizing program schedules, utilizing the program priorities contained in Section 2, above;
- c. Supervising volunteers, work study students and interns;
- d. Maintaining the Community Bulletin Board; and
- e. Developing a budget.

Section 4. Use of Equipment and Facilities.

FCTC2 production facilities and equipment are owned by the Town of Falmouth and shall not be used for personal use.

Only the following are authorized to use the production facilities and equipment:

- a. Town employees designated by the Town Manager or Station Manager;
- b. Work study students, volunteers and interns when acting under the supervision of the Station Manager.

Section 5. Limitations on Certain Types of Programming.

The facilities and resources of FCTC2 shall not be used for the following except as noted in subsections 1.a and b and 2.a below:

1. Material promoting a political candidate state ballot measure or local referendum question.
 - (a) Subject to staff and equipment availability based on the programming priorities in Section 2, FCTC2 will produce programming that (i) affords the opportunity to candidates for Town Council, School Board or other local elective office or the proponents and opponents of a local referendum question to appear in a "candidates night" debate or similar format and (ii) is directed and moderated by a civic organization, the mainstream media or, if the programming is regarding a local referendum question, a moderator agreed upon by the proponents and opponents of the question. If such civic organization, mainstream media or moderator are not available to direct and moderate a debate on local referendum questions, or if the proponents and opponents do not agree to participate in the debate, FCTC2 will, upon request, produce two broadcasts, one for the proponents and one for the opponents of a local referendum question to inform the public of their positions. Each broadcast shall be limited to no more than one (1) hour. FCTC2 will not

provide this non-debate forum to candidates for local elective office. Candidates, proponents and opponents that request staff, equipment and space to accommodate a production and/or broadcast of material described above, shall notify FCTC2 at the earliest possible convenience and in no event shall production occur less than ten (10) days prior to the election.

- (b) Broadcast of pre-recorded programming which meets all of the requirements of Section 5.1.a, above, but which is not produced by FCTC2. Such pre-recorded programming must meet the requirements of Section 6, below, and be delivered to FCTC2 not less than ten (10) days prior to the election.
2. Messages supporting or opposing any ordinance, order or resolve under consideration by the Town Council.
 - a. Subject to staff and equipment availability based on the programming priorities in Section 2, FCTC2 may produce programming that either (i) provides objective information on such measures but does not advocate for a specific position or (ii) affords advocates for various sides of the issues involved the opportunity to discuss the issues in a debate or similar format that is directed and moderated by civic organizations or the media, as described in sub-section (1)(a) of this Section 5.
3. Promotional material concerning commercial products or services. Information promoting gambling, lotteries, gift promotions and the like.
4. Programming which advocates a particular religion or religious beliefs. This does not preclude Community TV Bulletin Board notices for non-profit community events.
5. Any material which constitutes libel, slander, pornography, violation of trademark or copyright, or which violates any local, state, or federal laws, including FCC regulations.

Section 6: Technical Quality and Editing.

The Station Manager may reject any programming submitted for broadcast to FCTC2 if it does not meet the standards listed below.

FCTC2 Broadcast Standards

1. Program must deliver a clear and unbroken video and audio signal to subscribers;
2. All audio must be recorded on 2 channel stereo or mono only;
3. All programs must have 10 seconds of black at the beginning and end of a program;
4. All programs must be labeled with the program title, producer, date of completion and length; and
5. A digital video file that can be played on FCTC2's video server. (Please contact the station manager for video file compatibility.)

Editing

Special Programs: FCTC2 may modify or edit programming prepared by a municipal or school department as dictated by scheduling, resource requirements or FCTC2 broadcast standards.

Community Bulletin Board: FCTC2 may modify or edit material for clarity or to maximize the capacity of the system.

Section 7: Copyright Issues.

All FCTC2 productions, such as public meetings coverage and public affairs programs, and all special video works produced by FCTC2 will be under the copyright control of the Town of Falmouth unless one or more of the following apply:

- a. The work is produced strictly as a “work for hire” with funding provided by an entity other than the Town, e.g., a State agency or non-profit organization.
- b. The work is produced pursuant to a grant or other contractual arrangement which establishes the copyright holder as an entity or a person other than the Town.

Section 8: Freedom of Access Act Compliance.

Copies of all FCTC2 programming that falls within the definition of “public record” contained in Maine’s Freedom of Access Act (1 M.R.S.A. §§401, et seq.) shall be made available to the public subject to the provisions of the Act relating to recovery of costs.

Section 9: Retention of Programs.

FCTC2 will retain the video files of recorded meetings for at least one (1) year or in accordance with other local, state and federal regulations, whichever is more restrictive.

Section 10: FCTC2 Fee Structure.

1. Copying
 - a. VHS - - \$20.00 each copy
 - b. DVD - - \$20.00 each copy
2. Editing - - \$40.00 per hour
3. Camera work - - \$40.00 per hour

Item 10 Introduction of an amendment to Chapter 6, Article 6, Section 6.68, Appendices A-C of the Falmouth Town Ordinance that will change maximum levels of income and expenses for the General Assistance program.

Mr. Poore explained that the Town’s General Assistance ordinance mimics the state model and uses tables issued at the state and federal level that are specifically geared to this area. This is an annual process. The Council could go through a costly and laborious process to develop their own tables if they didn’t want to do this.

A public hearing was scheduled for November 14.

Adjourn

Councilor Payne moved to adjourn; Councilor Rodden seconded. Motion carried 5-0.

Respectfully submitted,

Melissa Tryon
Recording Secretary