

# **Town Council Meeting Minutes May 30, 2012**

## **Roll Call**

Councilor Chase, Payne, Rodden, Varney, Pierce, and Orestis were present and answering roll call.

Councilor Armitage arrived late.

## **Item 1                      Order to go into Executive Session pursuant to the Laws of Maine to discuss negotiation parameters associated with the Teamsters Local 340 and Maine Association of Police contract renewal, pursuant 1 M.R.S.A. § 405 (6) (D).**

Councilor Varney moved to enter executive session; Councilor Payne seconded. Motion carried 6-0 (Armitage absent).

The Council returned from executive session.

## **Pledge of Allegiance**

Chair Pierce led those present in the pledge of allegiance.

## **Public Forum**

Michael Doyle of Shady Lane spoke about the Falmouth Flyer and the METRO bus service. He said the service was a waste of money. He spoke about a petition for a referendum on the November ballot to end the bus service. He is collecting signatures.

George Burns of Falmouth Road spoke about the Falmouth Flyer petition. He is a supporter of the bus. He said there have been reports of people who have signed the petition thinking it was to save the bus, not for a referendum to end the bus service. He urged people to read petitions before they sign them. He felt the upward trend of usage on the bus is undeniable.

## **Item 2 (a)                      Order to approve the minutes of the April 9, 2012, Town Council Meeting. (Consent Agenda)**

## **Item 2 (b)                      Order to approve the minutes of the April 11, 2012, Town Council Meeting. (Consent Agenda)**

## **Item 2 (c)                      Order to approve the minutes of the April 23, 2012, Town Council Meeting. (Consent Agenda)**

Councilor Varney moved the consent agenda; Councilor Rodden seconded. Motion carried 7-0.

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

Councilor Chase said the Harbor Committee has met; they have accomplished a lot in the last few years. The atmosphere at the harbor is much improved. He reminded people to clean up after their dogs on the beach. There will be no more dinghy day; thanks to the municipal dinghies the number of dinghies is reduced. He thought it is as good as it has ever been at Town Landing, and he gave credit to Harbormaster Al Twombly. The waiting list has been reduced to 38 people.

Councilor Payne said LPAC is working very hard on the comprehensive plan and he expects reports from them in the next couple months.

Councilor Rodden stated that REAC has a full complement of members. Ecomaine is paying off its debt two years early. The ecomaine board agreed to dip into the reserves in 2013 for \$1 million to reduce the assessments of all the municipalities involved; this will mean a savings of \$46,000 for Falmouth.

Councilor Varney reported that Andi Jackson-Darling has been selected as the new Library Director. She was selected after a complete, nation-wide search. She has served as assistant director. A garden reception will be held to welcome her on Wednesday, June 13 from 5-7 pm at the patio at the library. A garden tour is scheduled for June 30 rain or shine; tickets are \$20 in advance, \$25 at the door.

Chair Pierce said PACPAC's summer program booklet has been published and is on the Town's website.

Councilor Orestis said the Conservation Commission has taken action on stormwater and invasive species. Their goals are to implement an invasive species action plan in the upcoming year and to review Town-wide stormwater discharge in conjunction with DEP impervious cover regulations.

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

Councilor Payne recommended the following appointments:

**Conservation Commission:** Sarah Boudreau and Susan Gilpin

**Planning Board:** Kermit Stanley, regular member; Jay Chace and William Benzing, alternate members.

**Recycling and Energy Advisory Committee:** Jeff Gremlich and Michelle Lamb

**Veterans Memorial Committee:** Art Frederiksen, Carol Kauffman, Ted Vail and Betsy Jo Whitcomb.

Councilor Payne moved to adopt the slate; Councilor Rodden seconded. Motion carried 7-0.

**Item 5                      Public hearing and order relative to renewal of the victualer licenses for:  
American Legion Post #154, Bernie's Place, Bernie's Foreside, Black Cherry Provisions, Church of St. Mary the Virgin, Circle K # 7601, Cork & Barrel, Dunkin Donuts, European Bakery, Falmouth By the Sea, Falmouth Congregational Church, Falmouth Country Club, Falmouth House of Pizza, Falmouth Little League, Falmouth Schools Food Service, Falmouth Sea Grill,**

**Family Ice Center, Foreside Community Church, Gus Gluten Free Bakery, Handy Boat Service, Hannaford Bros., Harmon's Lunch, Holy Martyrs, Hug's Italian Restaurant, Kaleidoscope Pie Company, Leavitt & Sons, Lotus Chinese Restaurant, McDonald's, Mother's Mountain, Nina's Variety, Nouria Energy, Personal Touch Catering, Portland Country Club, Portland Yacht Club, Professional Catering, Wendy's, Ricetta's, Rite Aid, Shaw's, Starbucks, Subway, Super Scoops, Cookie Gallery, Foreside Tavern, Woodlands, Town Landing Market, Grab a Byte Café, Waldo's, Wal-Mart, West Falmouth Baptist Church.**

Chair Pierce opened the public hearing.

A member of the public pointed out a typo; the American Legion post is #164, not #154.

Councilor Payne moved to renew the licenses; Councilor Armitage seconded. Motion carried 7-0.

**Item 6                      Resolution recognizing the Falmouth School District, winner of an ecomaine Eco-Excellence Award.**

Councilor Rodden read the resolution and presented it to the School Department.

Councilor Rodden moved to adopt the resolution; Councilor Varney seconded. Motion carried 7-0.

**Item 7                      Resolution recognizing Gorham Savings Bank, winner of an ecomaine Eco-Excellence Award.**

Councilor Rodden read the resolution and presented it to Gorham Savings Bank.

Councilor Rodden moved to adopt the resolution; Councilor Varney seconded. Motion carried 7-0.

**Item 8                      Order to approve the supplemental appropriation of \$40,500.00 to finance the abated property taxes resulting from the valuation reductions granted by the Assessor in excess of the FY 11/12 overlay of \$3,650.40.**

Town Manager Nathan Poore explained that the overlay is what is extra after the tax rate is calculated if the Town had more in valuation than what was anticipated. It is typically used to pay for abatements. Last year, in order to keep the tax rate as stable as possible, they brought the overlay down close to zero. In this year the abatements have exceeded the overlay amount and so they are asking for \$40,500 to cover the abatements. The abatements have not gone up this year; this is a result of keeping the overlay low.

Councilor Armitage moved to approve the order; Councilor Payne seconded. Motion carried 7-0.

**Item 9                      Order for amendments to the Code of Ordinances and the Zoning and Site Review Ordinance regulating temporary advertising signage as proposed by the Falmouth Economic Improvement Committee (FEIC).**

Councilor Armitage moved to adopt the amendments; Councilor Varney seconded.

Councilor Rodden felt this was a good example of how the business community can work with the Council.

Motion carried 7-0.

**Item 10                      Order on zoning amendments to expand the OceanView Retirement Community Overlay District (RCOD) and to create the Elementary School Redevelopment District (ESRD).**

Councilor Varney moved to adopt the amendments; Councilor Armitage seconded.

Councilor Payne asked if it was correct that only 20% of the property would be covered by buildings.

Matt Teare, representing OceanView, said that was correct.

Councilor Payne asked about the size of permitted retail and service establishments. He wondered if the 2,000 gross sq. ft. was for individual tenants.

Rick Licht, of Licht Environmental Design, representing OceanView, said that was for individual tenants.

Councilor Payne asked if there was an aggregate size limit for the permitted retail use.

Amanda Stearns, Community Development Director, said there was no aggregate total. The purpose was to allow some flexibility once the private/public partnership is designed. If there was a community center, for example, this would allow some ancillary retail use, like a small bakery or coffee shop. That use would have to be approved by both the Town Council and OceanView. This is not in the RCOD portion but solely in the ESRD.

Councilor Payne didn't want them creating a retail district away from the retail center on Route 1.

Councilor Rodden thought this was part of planning for what might be there in the future. 2,000 sq. feet is very small.

Motion carried 7-0.

**Item 11                      Public hearing and Order on a zoning amendment to create a Water View Overlay District.**

Chair Pierce gave a brief history of the amendment. This amendment would create an overlay district within which properties would be subject to the provisions of section 8.3; the rest of the Town would now be exempt from those provisions. Councilor Payne has proposed an amendment to create a sunset clause that would automatically repeal the water view protections. Councilor Rodden is recused from voting on this item, as she owns oceanfront property.

Councilor Payne moved to take the water view overlay district amendment off the table; Councilor Armitage seconded. Motion carried 7-0.

Councilor Rodden explained that she recused herself because she owns oceanfront property and repeal of the water view protections might increase the value of her property.

Chair Pierce opened the public hearing.

21 people spoke at the public hearing. Two people were in favor of the sunset provision and eventual repeal of the water view protections in the ordinance. 19 people were opposed to the sunset provision and spoke in favor of the protection of water views.

Chair Pierce closed the public hearing.

Councilor Payne moved to create a sunset on the water view overlay district of December 31, 2013. Councilor Armitage seconded.

Councilors Chase, Varney, Pierce and Orestis expressed their opposition to the sunset clause. Chair Pierce didn't feel it was enough time to work on it.

Councilor Armitage asked for clarification on whether Chair Pierce was opposed to any sunset at all, or was only concerned that it was too short. Chair Pierce didn't know what the right timeframe would be, but 18 months was certainly too short. She didn't like the idea of a sunset.

Councilor Armitage said the CDC recognized that creating the overlay addressed the specific issue of the backlog of work at the Board of Zoning Appeals (BZA). The sunset provided an opportunity to say that the water view provision was not appropriate and got to private property rights issues. The ordinances are to protect the public's health, safety and welfare only. They want to come up with an ordinance that protects the character of the neighborhood. This is why they wanted to create the sunset provision, not because they wanted to wash their hands of it. The sunset places a lot of pressure on the CDC and Council to fix this; without it the pressure to do something is off. They are suggesting a dimensional standard.

The Council discussed the sunset provision. Councilor Orestis was concerned with setting a sunset clause which, if the Council was unable to come to an agreement, would trigger an automatic action that might have unintended consequences and make things worse. Councilor Armitage argued that all they want is a dimensional standard, and all that is required is the staff time to go out and measure the affected buildings and properties.

Councilor Chase moved the question.

Motion failed 2-4 (Chase, Varney, Pierce, Orestis opposed).

The Council discussed the water view overlay district.

Councilor Payne spoke about the underlying principle of what property ownership means. The CDC researched other waterfront communities, and none of them had an ordinance that protected water views. He believed that this is a flawed ordinance; the Council at that time felt there were rights to a view imparted by mere ownership. The BZA asked for greater definition; he felt that any definition they brought forward would be inadequate in that it would have subjectivity. He felt people could protect their views by securing easements. He agreed with Councilor Armitage that this is a civil matter and since there is a remedy that is available, they don't need an overlay district.

Councilor Chase didn't think a remedy was available, and was concerned about releasing the rest of the Town from this ordinance as soon as possible. Councilor Varney agreed; she couldn't see everyone on a non-conforming lot having to go to the BZA. Councilor Pierce agreed as well.

Councilor Armitage argued that they could repeal section 8.3e and then they wouldn't need the overlay district. Chair Pierce didn't want to do that; she didn't want to move backwards and provide no protection while they work this out.

Chair Pierce read the proposed ordinance and clarified that Section 8.3e will still apply only to non-conforming lots in the overlay district.

Motion carried 5-0 (Armitage abstained).

Councilor Armitage abstained because he felt that this is a private property rights dispute and they should repeal it.

**Item 12                      Review of draft Route 1 zoning concepts and infrastructure options prepared by the Community Development Committee.**

Councilor Payne said the CDC has been working on what Route 1 is going to look like. They have been discussing past votes that reflect the voters' opinions on the character of the Town. The CDC has been looking at Route 1 as the economic hub; this has been done using Smart Growth principles. They have discussed future traffic concerns. Staff looked at two distinct areas that the Town controls: the infrastructure and the zoning.

Theo Holtwijk, Director of Long-range Planning, discussed the history of the work of the staff and the CDC on Route 1 to date.

Amanda Stearns, Community Development Director, discussed the zoning purposes and concepts discussed by the CDC. They are currently discussing two "Village Center" zoning districts: VC-1 would be pedestrian oriented, while VC-2 would be a transition area into the southern residential area starting at Clearwater/Fundy Rd. They would increase development density with reduced setbacks and increased building heights, reduce off-street parking requirements, allow for expanded use options such as housing, allow internal streets and create an expedited permitting process for minor projects. The current front setback in the district is 80 feet, though it can be reduced to 40 feet. In the proposed VC-1 they propose a front setback allowance from 0-20 feet, with 0-55 feet allowed in VC-2. Allowed building heights would be increased from 2 ½ stories to 4 stories. Currently, no on-street parking is allowed and there are no limits on parking between building and the street except that parking is not allowed within 20 feet of the right of way. The proposal is to prohibit parking between the building and the street while exploring on-street parking in VC-1; and locating parking to the side and rear of the building while allowing only one row of parking between the building and the street in VC-2. The CDC has discussed the existing buildings and would not place expansion limits on conforming buildings. They would allow minor expansion with no restrictions for non-conforming buildings and unlimited expansion for non-conforming buildings if the building was brought toward the street and pedestrian access was improved.

Mr. Holtwijk discussed the infrastructure. The CDC has just begun reviewing investing in the infrastructure in order to support future growth. There are three options: A. do the required elements only; B. do a mix of required and some choice elements; or C. do many of the choice elements. Option A would cost approximately \$1 million and would include coordinating traffic signals, filling in sidewalk gaps, some pedestrian lights, lane restriping, a refuge island at Falmouth Shopping Center and removal of the deceleration lane at Wal-Mart. Option B would cost around \$5 million and would include all the elements of Option A plus bicycle lanes, more pedestrian lights, stormwater retrofits, some underground power, traffic signal mast arms, wider sidewalks and bus stops/bike racks. Option C might cost around

\$15 million and includes all the elements of options A and B plus underground power from Morong to Bucknam Road, a center median with trees, on-street parking, an expansion of the Route 1/Bucknam Rd. intersection, and a gas main. He discussed various possible funding sources, including MDOT's planned paving on Route 1 for \$700,000, a potential PACTS signal coordination grant for \$200,000 and the Route 1 South TIF, which nets around \$600,000 a year and is largely earmarked toward infrastructure improvement in the area. He discussed the next steps; the goal is to get public feedback and further Council feedback and then bring the final recommendations to the Council in the fall.

Chair Pierce wondered about the impact to the school department of people moving into housing along that area and asked whether that has been discussed.

Councilor Armitage felt that, based on his knowledge of other communities, this housing wouldn't be filled up with families, but with people who are older and don't want a house anymore or with young couples. These would likely be 500-1000 sq. ft. apartments with one- or two-bedrooms, which wouldn't be conducive to a growing family.

Councilor Payne pointed out that they could be condominiums. Councilor Varney thought they would get both empty nesters and also singles who want to live close to Portland.

Councilor Rodden pointed out that this area is close to the bus line, which would allow those residents to move around without a lot of stress on the infrastructure. This moves development to the village center and frees up the pressure on the rural areas to develop, thereby preserving the rural character of those areas.

Chair Pierce asked about the 4 story building height allowance; Ms. Stearns confirmed that it is in both districts for now.

Chair Pierce thought they were giving business a lot of flexibility with the allowances for expansion.

Councilor Armitage said, if they were trying to encourage developers to build to the street, they need to give them the encouragement and flexibility to do that.

Councilor Chase was concerned about how to pay for all this. This whole area is already developed.

Councilor Rodden said they discussed phases, which would spread out the costs. They can also pick certain things out of the Option C plan, which would reduce the costs. The committee hasn't yet discussed which things they would like to see. She asked if there was a build up of funds from the \$600,000 they get from the TIF every year.

Mr. Holtwijk said yes, they are carrying a balance. The Town has been doing projects with those funds, so there is not a large balance.

Mr. Poore said he would research the balance, but he wouldn't count on any excess. This project was anticipated several years ago so some of these proposed projects are included in the TIF capital plan.

The consensus of the Council was that the CDC was headed in the right direction with this plan. Next steps include public outreach which will probably occur in July.

**Item 13                      Order to adopt a voluntary Pledge of Fair Campaign Practices for future Council and School Board candidates.**

Councilor Armitage was troubled by continued negative campaigns in Town elections. He felt that residents should be able to debate the issues and not the person. The Council is expected to operate with a certain level of decorum, and he felt candidates should operate at the same level. He used the Maine Clean Elections Pledge as a basis; it is an optional pledge. It doesn't say that people can't express their opinions, but establishes some ground rules of fairness. While candidates can't control what other people do or say, as civic leaders they have the ability to influence that. They should be able to say to their supporters that they don't want any negative campaigning.

Councilor Armitage moved to adopt the order; Councilor Varney seconded.

Chair Pierce opened a public comment period.

Russ Anderson of Oakmont Drive is a Council candidate and felt civility in public discourse is incredibly important. He would like to see all the candidates get together at the beginning of the campaign period and agree on norms of behavior. He thought this was an important issue.

Sean Mahoney of Falmouth Road is also a candidate for Town Council and thought the pledge was a good idea. He didn't think the candidates have had the opportunity to debate the issues yet, though they will soon. He liked Mr. Anderson's idea. He pointed out that they can't always control their supporters.

Karen Farber, another Town Council candidate, agreed with both Mr. Anderson and Mr. Mahoney.

Brian Dench of Foreside Rd is a candidate for Town Council and agreed as well. He would never want one of his supporters attacking another candidate. He spoke about a letter that addressed his involvement in the 2009 referendum. There was nothing out of the ordinary in the views he expressed at that time. He respected people's right to express their opinions. He didn't expect the Town Council to address that issue; he felt it was important to focus on local issues in this campaign. He supported this proposal.

Chair Pierce closed public comment.

Councilor Orestis called the question. Councilor Rodden seconded.

Motion carried 7-0.

**Item 14                      Order to nominate municipal officials to serve on the MMA Legislative Policy Committee.**

Councilor Armitage spoke about his experience on the Legislative Policy Committee.

Councilor Orestis expressed interest in serving on the LPC.

Councilor Rodden moved to nominate Councilor Orestis to serve on the LPC; Councilor Payne seconded. Motion carried 7-0.



**Item 15                      Introduction of an amendment to Chapter 6, Article 6, Section 6.68,  
Appendices A-F of the Falmouth Town Ordinance that will change maximum  
levels of income and expenses for the General Assistance program.**

Mr. Poore explained that this is a mandate from the State. There was good rationale and compromise behind this change. This amendment includes a 10% reduction in the maximum overall assistance allowed.

Town Clerk Ellen Planer explained that, for a family of three, the maximum is currently \$1,249; it will go down to \$1,124.

Mr. Poore said the housing allowance was also reduced to 9 months.

A public hearing was scheduled for June 18.

**Adjourn**

Chair Pierce thanked Councilors Chase and Armitage for their service.

Councilor Varney moved to adjourn; Councilor Armitage seconded. Motion carried 7-0.

Respectfully submitted,

Melissa Tryon  
Recording secretary