

Town Council Meeting Minutes September 24, 2012

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

Roll Call

Councilors Farber, Pierce, Rodden, Varney and Mahoney were present and answering roll call.

Pledge of Allegiance

Chair Varney led those present in the Pledge of Allegiance.

Councilor Payne arrived at the meeting.

Public Forum

Steve Woods, owner of Tidesmart Global at 380 US Route 1, spoke about the comments made by the Council at last month's meeting that he felt disparaged him.

Karen True-Winslow of Gray Road was unhappy with recent Council behavior and spoke in support of Steve Woods.

John Winslow of Gray Road felt it was a citizen's right to speak at public forum. He was unhappy with what was said at last month's meeting about Steve Woods.

David Bower of Foreside Road felt the Council's laptops should be down and they should be focused on the speakers.

Alex Agnew of Avon Road spoke about the bus service. It is a reliable and cost-effective alternative to driving. He urged Falmouth citizens to support the bus service. It represents 1/300th of Falmouth's budget. He spoke against governing by referendum.

Mike Doyle of Shady Lane spoke about the bus service. He said the 79,000 rides reported are not the number of people who ride the bus, but the number of trips. He didn't feel it was justified to spend money on a bus that drives around empty. He urged citizens to vote yes and end the bus service.

Item 1 Order to approve the minutes of the August 27, 2012, Town Council (Consent Agenda) Meeting.

Councilor Pierce moved to adopt the minutes; Councilor Rodden seconded. Motion carried 5-0 (Farber abstained).

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

Councilor Pierce urged citizens to complete the survey for the draft chapters on the comprehensive plan. It is open until October 15.

Councilor Farber reported that the FEIC is working on a “Shop Falmouth” holiday event. They have also started looking at the mobile food cart issue sent to them by the Council.

Chair Varney said the Library Board had their annual meeting last weekend; it was very well attended.

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

Councilor Pierce recommended that Mark Porada be appointed to the Library Board of Trustees. She thanked Sean Joyce for his service to that Board.

Councilor Farber moved the appointment; Councilor Rodden seconded. Motion carried 6-0.

Item 4 Public Hearing on an amendment to the Zoning and Site Plan Review Ordinance to revise the time limits for the West Falmouth Crossing Master Plan.

Councilor Farber explained that a number of questions came up at the introduction. The master plan has expired; there was extensive research done on both the implications of extending it and what the reasoning was in imposing the ten year limit to begin with. The reasoning was that, if the development never got off the ground, the master plan would expire. Allowing the district to expire at this point would allow development on the two vacant lots that wouldn't fit with the other development in the district.

Public comment period opened;

Joe Malone of Malone Commercial Brokers is representing the two remaining lots in the district. He has been involved in the project since its inception.

John Hobson of Pleasant Hill Road was involved in the process when the development got off the ground. They paid for the design guidelines as part of the TIF. Allowing it to lapse would be a waste of the taxpayer money that has been put into the guidelines and infrastructure.

Public hearing closed.

Councilor Farber felt they should extend it. There are two remaining lots, and keeping the consistency of what is there now makes a lot of sense.

Councilor Rodden pointed out that, according to the staff memo, they are making it easier on business. The standards under the master plan are more relaxed.

Councilor Mahoney asked about the staff comment that, without the extension of the master plan, all current development may become non-conforming. He also wondered what happens in another 10 years when this extension expires.

Community Development Director Amanda Stearns said that non-conformities could impact future development. They could look at a longer extension, but allowing it to expire would lead to some of the buildings becoming non-conforming. Another possibility would be to extend it in perpetuity; any future Council that wanted to review it would still have that option.

Councilor Mahoney didn't want a future Council to be in this same position 10 years from now.

Councilor Pierce voiced support for extending it, and for reviewing a longer time period.

The order was scheduled for October 10.

**Item 5 Public Hearing on a proposed amendment to the Zoning and Site Plan
Review Ordinance regarding tenant footprint limitations in SB1.**

Councilor Rodden presented the work of the CDC on this item. The proposed footprint limitation would span the length of Route 1 from the Falmouth Shopping Center to the Real Estate Network building on the East side and from south of Bucknam Road to A Perfect Smile on the West side. The goal of the CDC for Route 1 is to create a walkable, village center to benefit both residents and local businesses and in doing so, define the current character of the area, promote economic development, maintain diversity of uses and minimize large-scale vacancies that are difficult to fill. There is no magic formula for choosing a size limitation; 95% of the 145 tenant spaces along this stretch are less than 30,000 sq. ft. She spoke about similar footprint limitations in neighboring towns. The long-term goals for Route 1, which have been in effect since the Route 1 study was published in 2005, include creating a business district that establishes a sense of place, pedestrian friendly access, and managing traffic. According to data from 2008, 45% of the businesses in SB-1 are professional and business offices, 29% are retail and service, 8% are restaurants, 5% are automotive sales and service and 13% are vacant. Most of the vacancies were at the Falmouth Shopping Center. 90% of current spaces are under 15,000 sq. ft. The proposed amendment would limit ground floor tenant space to 30,000 sq. ft. The total tenant space, due to a limitation on 2½ stories in the district, would be limited to 75,000 sq. ft. It would also increase the limit on ground floor area for professional and business offices from 20,000 sq. ft. to 30,000 sq. ft. and limit grocery stores to 60,000 sq. ft. There would be no limit on hotel/motel use or overall building size, except for stand-alone grocery stores. This amendment would allow existing tenant spaces to be reoccupied regardless of their size. She clarified that the proposed amendment regulates tenant space, and not building size, as has been discussed by prior Councils. For comparison, the Maine Medical Center on Bucknam Road has 20,000 sq. ft. on each the first and second floors. The Staples store has 27,500 sq. ft. on one floor. They chose the proposed limit because it accommodates all but the five largest tenant spaces, and is supported by the Village Center Design Guidelines.

Public comment period opened;

Councilor Orestis arrived at the meeting.

Mike Doyle of Shady Lane was opposed to the amendment. This was a solution in search of a problem. He didn't think Route 1 was a Village Center.

Peggy McGehee spoke in favor of the amendment. She said Falmouth is a wonderful town; they have a great Route 1. She applauded the Council's foresight. This would support the small, local businesses.

Parker Sowles of Depot Road is a member of the family that owns Morong Falmouth. A 30,000 sq. ft. limit severely restricts business growth. It is a deterrent that cannot be overcome. He wants a viable Route 1 business district and asked the Council to respect the business owners.

Tom Churchill, property manager of the Falmouth Shopping Center, said they have no objections to the goals of a downtown area, but felt this puts limits on their ability to have a viable shopping center. All the potential tenants that have looked at the former Shaws space since 2005 needed more than 30,000 sq. ft. If they are going to keep the center viable they need the flexibility to adjust the tenant sizes; they don't know what kind of uses will come in the future. He said if the Council wants a size limit, they should also have a mechanism to override it, either by variance, conditional use or something else.

Mary Costigan of Underwood Road spoke behalf of Lou Vinios, owner of the Falmouth Shopping Center, and said Mr. Vinios' concern was that the public process in 2009 developed a suggested limit of 60-90,000 sq. ft. The proposed limit of 30,000 sq. ft. came out of a process that didn't include the business

community. There is an exemption on existing tenant spaces in the proposed ordinance, but it is difficult to define the existing tenant space if there is no tenant in it. She asked for flexibility for the property owners. Going up 2.5 stories isn't necessarily helpful in all circumstances. She presented the Council with a letter from Mr. Vinios.

Councilor Rodden asked Ms. Costigan to contact the Council if she had any technical suggestions.

Jon Berry, president of the Falmouth Economic Development Commission, said the FEDC does not support the footprint limitation. They do support the infrastructure plan. 30,000 sq. ft. is an arbitrary figure and doesn't take into account what the business community needs. He spoke about the purposes of zoning. He submitted a signed petition to the Council.

John Hobson of Pleasant Hill Road supported the proposed amendment. It provides for a manageable scale. When Kmart left, it left a huge hole. There was a lot of time and effort put into revitalizing the area in the 1990's. Falmouth has always tried to get ahead of the curve, instead of being at the whims of current economic times.

Elizabeth Moss, of Elizabeth Moss Galleries in the Shopping Center, said the tenants of the Shopping Center support zoning flexibility in the redevelopment of the shopping center, including allowing a tenant to reuse as much of the existing footprint as they could. She has been in the building for 8 years. She didn't feel that a number of smaller stores will create a village center. There isn't the draw of two large stores to provide an anchor for the smaller businesses. She submitted a signed petition to the Council.

Donna Williams, owner of the Book Review at the Shopping Center, agreed with both Mr. Churchill and Ms. Moss. She has been there for 30 years. She felt it was a neighborhood shopping area when she was first there. Since the effort was first launched 10 years ago, pedestrian activity at the center has fled.

Ann Goggin of Foreside Road felt retailing was different 30 years ago. She worked in retail for Hannaford at the time, and it was typical for shopping centers to have two large retailers, with small businesses in between. Since then big box stores have become the norm, driving smaller businesses out. She argued for going further and lowering the allowable height and expanding the SB-1 district to include the turnpike spur area. She asked the Council to look at the design guidelines and how they regulate parking lots. She supported the effort of the Council.

Richard Olsen asked the Council to look at it in the long-term. Stores come and go. He felt it was important for the Council to look to the future. There was a lot of hard work by a lot of people to try and come up with a vision for Route 1. There is a village aspect over there. He supported the 30,000 sq. ft. limit, but thought it was a waypoint to the next conversation.

David Bower of Foreside Road has a business in the Real Estate Network building and would like more places to eat. He disagreed with the premise that they needed anchors; people will drive to get something that they want. He felt Falmouth was a great place for specialty shops that will attract people. He didn't see the need for zoning to push this forward when it seems to be going that way on its own. He felt the 30,000 sq. ft. was an arbitrary number.

Dee Conroy-Vella of Meadow Creek Lane didn't agree that 30,000 sq. ft. is arbitrary; when 95% of existing businesses are under that number, then 30,000 is reasonable and accommodating of what is there. There have been an enormous number of questionnaires sent to the Town and charrettes held, and the Council is showing foresight and preparing for the future. The 60 acres owned by the Shopping Center would allow for 5 Big Lots stores. She didn't think the residents wanted that.

Amanda Henson of Meadow Creek Lane didn't think either the footprint limit or the height limitation were arbitrary. If there is a business that wanted to come into the vacant Shaws space, and wanted to take on what was the Bank or Rite Aid, she would like to see some flexibility for that.

Marna Miller of Philips Road supported the purposed limit. There has been consensus here tonight that vacant big box stores are a problem. She felt this is was not just an opportunity to be mindful of where development can go, but they have an obligation to be mindful of where this type of outmoded development can go.

John Jones of Foreside Road said the big box store model is obsolete; across the country these stores are closing. He wondered if the Council wanted to promote or preclude economic development. He felt a big store meant a big customer base for the smaller stores in the area. He spoke about a lack of opportunity for recent graduates in Falmouth. He wondered why they would want to stop development in these economic times.

Public comment period closed.

Councilor Farber wondered if it would be helpful to think of tenant footprint limits for new construction as separate from existing buildings. It was unclear to her whether someone could split the former Shaws space into one 40,000 sq. ft. and one 12,000 sq. ft. space. She also wondered if there was some opportunity to move the 52,000 sq. ft. into a different location within the existing building, and reconfigure the building. There is a challenge with the existing properties. She asked where the limit of SB-1 is on the North side.

Councilor Rodden said SB-1 is at the top of the Shopping Center; the 28 acres above that is in the BP district. The edge on the other side is Bucknam Road. Norway Savings Bank and the Foreside Tavern are in BP. When they did the charette and discussed the whole property, they discussed that the owners would need a contract zone to connect the two parcels, as they are in different zones.

Councilor Farber has heard concerns from a number of people about having retail space set up to contain a lot of office space. She thought they should think of office space differently and perhaps it should have a different footprint limit. 30,000 felt limiting to her; she thought she would feel more comfortable in the 50,000 sq. ft. range. That size would prevent big box development, but still allow flexibility.

Councilor Payne said this footprint limit has led to a lot of discussion on the committee level. He felt the most telling testimony came from Elizabeth Moss and the business community. It wasn't within the Council's bounds to determine what development will look like in the shopping center. None of the Councilors are developers and they don't know what the economics of development are. He didn't want the Council to tell the owner of the shopping center what it should look like. He felt they should let the developer, using the feedback from the community that said 60-90,000 sq. ft., determine the development. No one wants a big box store. To make a retail district viable, you need to have density including residential, retail and office space. He felt the 30,000 sq. ft. is the wrong message. While 95% of tenancy is under 30,000, the national average is for 90% of all businesses to be small business. This has a potentially chilling effect on infill development for the area. He voiced support for 60-90,000 sq. ft.

Councilor Rodden asked whether he referred to footprint limits, or total square footage.

Councilor Payne said what he got from the charette was footprint limit.

Councilor Farber asked if there could be 52,000 sq. ft. of office space in the former Shaws. Ms. Stearns confirmed that was correct, as it would be grandfathered.

Councilor Pierce struggled with this issue; she was troubled that Councilor Payne considered the wants of the business community and developers without considering the desires of the residents. She didn't think

the 60-90,000 limit discussed at the charette was a number that had a lot of work behind it; it was a number brought forward by the developer. She appreciated hearing from the business owners in the area; the Council is talking not just about the Center, but the whole SB-1 district, and not just about today and the current economic times but about 20 years from now. She leaned toward 50,000 sq. ft., which is consistent with other towns in the area. She felt they should make a call and go for it; she didn't want to have a lack of clarity around this. She would like to pull movie theaters out of the proposed limits, as she felt that would be a draw to more people. She would like to talk about height restrictions; a half-story isn't really usable space.

Councilor Rodden clarified that the height limit is 2.5 stories, or 35 feet. That is a current restriction in SB-1. They were planning to evaluate height in the next phase of zoning review.

Ms. Stearns clarified that a half-story refers to a floor with half the floor space of the floor below. There is full head height in a half-story.

Councilor Mahoney agreed with Councilor Farber's recommendation on having distinction between new and existing structures. He would like more clarification on the possibilities for dividing the existing space at the shopping center. He supported expansion of the zone to include the cloverleaf, to capture any future development. He spoke about density; he is interested in the potential for commercial density in the area. The TD Bank office building in West Falmouth has 45,000 sq. ft. of space, and he wouldn't want to preclude that type of development coming into the area. While they are not developers, they have the responsibility to take the long view and they have an important role to play in setting parameters for development. He wasn't interested 30,000 sq. ft., he was interested in a limit on new development of 40-50,000 sq. ft. buildings. He didn't think leaving it to contract zones or variance was the way to allow flexibility. The Council should make a decision on what is right. He thought they should also build in incentives for innovation, if a developer went beyond the best management practices for stormwater for example.

Chair Varney was struck with the figure that 95% of businesses were less than 30,000 sq. ft. and the town didn't have a limit in place. They have the design guidelines in place, which she likes. She did not support the limit.

Councilor Rodden said it seemed to her that the Council wanted a footprint, but disagreed with the number. 90,000 sq. ft. is the highest discussed, and 30,000 sq. ft. is the lowest. Councilor Mahoney wanted an expandable number, based on whether things are done to improve the building for the benefit of the Town. She wondered if the Council would rather send the item back to the CDC for more work, or offer amendments to the current proposal.

Councilor Mahoney clarified that his suggested expandable number would be based on set parameters. He supported 50,000 sq. ft. and didn't see a need to draw a distinction between retail and office space.

Councilor Farber pointed out that this wasn't just about the shopping center property; anything could change in the future. She wondered if the rest of the Council saw a difference between limiting new construction and existing buildings.

Councilor Rodden felt the amendment does address existing tenant space. If they start saying only new buildings, they are going to lose the vision. You have to start somewhere. There isn't that much opportunity for new buildings along Route 1. She could understand that the tenants of the center wanted as much flexibility for the developer as possible, but there was no guarantee that there would be a customer connection between a big box tenant and the small businesses. She felt it made more sense to be more comprehensive.

Councilor Mahoney asked for clarification that any existing building with more than 30,000 sq. ft. could divide that into whatever they wanted.

Ms. Stearns said any space, not any building. They could take the existing, former Shaws space and divide it into smaller spaces, but they couldn't take the entire shopping center building and re-divide it into two 10,000 sq. ft. spaces.

Councilor Rodden said they could also take 5 tenant spaces of 5,000 sq. ft. each and combine them into one, 25,000 sq. ft. space.

Councilor Payne said that, if they divided the former Shaws they couldn't add it back together again. He asked if they could go with the 72,000 sq. ft. of the current Shaws as the upper limit.

Councilor Pierce agreed that, if they have an existing grocery store at 72,000 sq. ft., maybe they shouldn't move grocery stores back to 60,000 sq. ft.

Councilor Rodden pointed out that there are other grocery stores that are smaller than that. If the point is to have limited spaces, 60,000 sq. ft. is already twice the 30,000 sq. ft. level, and it is a size that is common for grocery stores.

At Chair Varney's question, Ms. Stearns said the current Hannaford is in the mid-50,000 sq. ft. range; it has some office space above the retail store.

Councilor Payne polled the Council about the 50,000 sq. ft. size; most councilors indicated agreement with that number as a maximum. Councilors Pierce and Rodden didn't want to go above that number.

The Council discussed the process moving forward, whether to send the amendment back to CDC or whether to put an amendment forward on the proposed language. The consensus of the Council was to work on it at the Council level. Town Manager Poore suggested a workshop session.

Councilor Farber wondered if there should be a different footprint limitation for office space versus retail space.

Ms. Stearns pointed out that the BP district does not allow any retail; it is designed for office and manufacturing. The intent was that SB-1 would be the retail/service area at a time when those uses were typically separated. Since the 1980's they think differently about the benefits of mixed-use development, combining residential, office and retail uses.

Councilor Pierce felt that the 30,000 sq. ft. figure didn't have traction; she thought that there was support on the Council for 50,000 sq. ft.

The item was scheduled for a workshop at the October 10 Council meeting.

Item 6 Order to call the municipal election and sign the election warrant for the November 6, 2012 municipal referendum question. Pursuant to Article IX, Section 902 of the Town Charter and M.R.S.A 30-A § 2528 (3).

Councilor Pierce moved the order; Councilor Payne seconded. Motion carried 6-0 (Rodden absent).

Item 7 Introduction of an amendment to the Zoning and Site Plan Review Ordinance that permits drive-thru and carry out restaurants in the Mixed Use Cluster District.

Councilor Orestis introduced the amendment. Portland North Park is seeking an amendment to allow drive-thru and carry out restaurants in the MUC district.

David Latulippe, representing the developer, indicated the area of the zone where the proposed development would be located and a plan of the property in question. They would make improvements to the existing building and parking to improve the flow and look of the property. They would maintain the back building. Tom Gorrill of Gorrill-Palmer told them the interchange was sufficient, but that they would need a small, left-turn pocket on Route 100.

Joe Cooper, property owner, said he has been in touch with abutter David Chase about the proposed development.

Chair Varney asked if all the exiting would be out to Elm Lane. Mr. Latulippe said yes. He also said they are trying to keep this process as simple as possible.

A public hearing was scheduled for October 22.

Item 8 Order to adopt an amendment to the Code of Ordinances relative to the Council Liaison to the Long Range Planning Advisory Committee (LPAC).

Councilor Pierce moved the order; Councilor Farber seconded. Motion carried 7-0.

Item 9 Order to appoint a Voting Delegate and an alternate for the Maine Municipal Association's Annual Business Meeting on Wednesday, October 3, 2012.

No action was taken.

Adjourn

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

Meeting adjourned 10:04 pm.

Respectfully submitted,

Melissa Tryon
Recording Secretary