

Town Council Meeting Minutes December 9, 2013

Item 1 Site and building inspection with representatives of Falmouth Memorial Library.

The Councilors took a tour of the library facilities beginning at 5:20 pm.

The Council reconvened at Town Hall at 7:00 pm.

Roll Call

All Councilors were present and answering roll call.

Item 2 Order to approve a memorandum of understanding (MOU) between the Town of Falmouth and the Falmouth Memorial Library.

Councilor Farber explained that the proposed draft MOU was recently approved by the Trustees. It is a combination of items from the current (1994) MOU, components drafted between the two bodies a couple years ago during discussions about moving the library, and some new items. Changes have been made to the document since the Councilors reviewed a draft earlier this year. The Town Attorney has reviewed this document, including the language governing the structure of the joint finance committee. The Town Attorney also closely reviewed the language governing the dissolution of the library, which would allow the Town to re-establish the library.

Chair Pierce opened a public comment period.

Mark Porada of Spoonrift Road is the president of the Library Board of Trustees. He thanked the Council and town staff for their work preparing this document. He believed this agreement would accomplish their ends and he encouraged them to pass it.

Public comment period closed.

Councilor Farber moved the order, Councilor Mahoney seconded.

Councilor Anderson pointed out that the 1994 agreement, paragraph 4 states that “...*Once the Project has been completed, any further alterations, additions or improvements to the Library involving structural changes shall require the prior written consent of the Town, which consent shall not be unreasonably withheld.*” He asked why this language was not included in the new agreement, which will replace the old one in its entirety.

Councilor Farber said there was a draft MOU between 1994 and this new one where there were conversations about the library joining up with a community center. She surmised that this was removed at that point; she didn’t think it was an overt omission. She felt the MOU would be updated again based on where the expansion is going.

Councilor Anderson felt it was included in 1994 when the 50/50 ownership began. He felt it should be carried forward in some fashion.

Councilor King asked if there would be a MOU around the expansion project itself. She thought the 1994 document was drafted specifically around the expansion at that time.

Councilor Farber said the expansion raised the possibility of changing the ratio of ownership. She thought there would be an addendum to this 2013 MOU to reflect the expansion.

Chair Pierce thought this document set the stage for where they are and how they work together, but doesn't have much to do with any future involvement. She thought there would be another document when they engage in the expansion project.

Councilor Mahoney said in 1994 the Library and the Town agreed to change the deed so that they would be tenants in common. As such the Town has the right to say they don't agree with something that was being done to the property. That provision on the deed will remain and provides the protection in that language. While the 1994 MOU requires written consent, and therefore an extra layer of security, that protection still exists in the deed.

Councilor Anderson wasn't uncomfortable with the draft as it is; he just wanted to understand why it wasn't there. He was satisfied with this document in the short term.

Councilor Farber moved to amend the MOU, section 5 b, as follows: *The Town has assigned, and ~~may~~ shall continue to assign, a member of the Town Council to serve as liaison between the Town Council and the Library*"; and to amend section 5 c: *"The Town Council ~~may~~ shall appoint a Town Councilor or Town employee to serve as its representative on the Library Board of Trustees' Finance Committee for a term to be set by the Town Council."* Councilor King seconded. Motion carried 7-0.

Mr. Porada confirmed that technically it will have to return to the Board of Trustees for a vote.

Amended motion carried 7-0.

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

Councilor Farber explained that there is a list of reappointments as well as new appointments to committee assignments.

Councilor Goldberg moved the slate of appointments, Councilor Mahoney seconded. Motion carried 7-0.

Item 4 Public Hearing and Order relative to a new victualer/food service license for Cafe Crepe.

Lauren Dallam of Café Crepe explained that she is applying for a food truck license; her truck is licensed in Portland and with the state. She plans to be at the summer farmers market in the Walmart parking lot.

Public comment period opened; no public comment.

Councilor Farber moved the order; Councilor King seconded.

Councilor Orestis asked if the license limits her to the farmers market or if she can be located anywhere.

Ms. Dallam didn't have another location in mind right now, but she might like to have additional locations in the future and wondered whether she would have to come back to the Council for approval.

Amanda Stearns, Community Development Director, said if the location is not on the license it is not permitted.

Councilor Orestis asked how many mobile food vendors are licensed.

Ellen Planer, Town Clerk, said the Town has two licensed right now. She said Ms. Dallam is only allowed to go to the location that is listed on the license.

Councilor Mahoney said the location is listed in the cover letter, not on the license application. Ms. Planer said that is why the application has to include a letter of intent, to clarify where the vendor intends to be and when.

Ms. Dallam said she doesn't have any plans to go anywhere else, but she asked if she would be allowed to go to any type of event that was held in town. She said she will be at the winter farmers market as well.

Motion carried 7-0.

Councilor Farber said it wasn't her understanding that they put a limit on mobile vendors' locations in the license. Some concerns were expressed and it was discussed by FEIC, but the committee didn't come back with a recommendation for the Council to make any changes.

Chair Pierce offered to work with staff to clean up any confusion on this issue.

Item 5 Ordinance to amend the Zoning and Site Plan Review Ordinance's definition of farming in the Farm and Forest District to include commercial greenhouses.

Councilor Farber moved the ordinance; Councilor King seconded. Motion carried 7-0.

Item 6 Ordinance to amend the Zoning and Site Plan Review Ordinance to add certain service uses to the Business Professional (BP) District.

Councilor Anderson moved the ordinance; Councilor Orestis seconded.

Councilor King said the ordinance will make a very small change. Part of the new comprehensive plan calls for the Council to look at BP in a more comprehensive way. She wondered if this change was setting a precedent for making small, ad-hoc zoning changes.

Councilor Orestis asked if it would provide an immediate opportunity for a particular business. Chair Pierce said it was brought by a business owner who tried to bring something in that wasn't allowed. She didn't know if any business was ready to move in now. This amendment would allow more flexibility.

Councilor Orestis asked what type of businesses would be allowed under this change. Chair Pierce said it would allow spa/hair salons; places a person would make an appointment, not drop in.

Councilor King said the district is zoned for offices.

Chair Pierce said there have been additions to this district in the past, for the ballet studio for example. She was comfortable making this change since the comprehensive plan calls for the Council to look at this more comprehensively in the future.

Councilor Anderson understood Councilor King's point; in a perfect world they would be making changes along with the plan, but a lot of work needs to happen with the plan first. He thought they should move ahead with this change now and take a comprehensive look later.

Councilor Orestis said they should support this if there is an immediate opportunity to support a local business. He asked if there was a downside to making this change.

Councilor King felt there was a purpose to planning. She wondered if there was an affect to other businesses when they make small changes like this.

Councilor Orestis asked what that affect would be.

Councilor Goldberg said a salon moved to Yarmouth from Falmouth because the owner couldn't relocate to a store on Route 1 north due to the zoning.

Councilor Farber understood the concern for creep, but she was comfortable with this change in light of the discussions happening around Route 1 north.

Motion carried 6-1 (King).

Item 7 Ordinance to amend the Code of Ordinances, Chapter 17 Traffic and Motor Vehicles, to regulate wreckers and vehicle towing.

Councilor Farber moved the ordinance; Councilor Mahoney seconded. Motion carried 7-0.

Item 8 Ordinance to amend the Code of Ordinances, Chapter 6 General Assistance.

Councilor Orestis moved the ordinance; Councilor King seconded. Motion carried 7-0.

Item 9 Update by the Community Development Committee on the preparation of final Route One Infrastructure Plan Construction Documents.

Councilor Anderson discussed the goals of the Route One project and the work the CDC has done to date. They have had to make some adjustments to keep the project within the amount approved by the voters, and they do not have final numbers on the cost of burying the utilities underground. Currently the power lines will remain aboveground from Route 88 to Waldo's General Store; this area is mostly forested and the visual impact will be minimal. Utility connections to the businesses across the street from those lines will be placed underground. The stormwater plan they have drafted is cheaper than originally thought and will treat 4 acres of stormwater; there is none being treated today. They reduced the sidewalks along the whole length from 10 to 8 feet wide and have retained the ability to turn right on red from Bucknam Road to Route 1. Several items are being held aside as bid alternatives; if there is room in the budget when the bids come in, they will add those back into the project.

Joe Laverriere of Fay, Spofford and Thorndike (FST) gave a presentation on the work to date. They have now changed the sidewalk/esplanade to 8"/10" instead of 10"/8". The sidewalk would be on both sides. The pedestrian light fixtures would be 100" on-center, the street lighting would be 140" and staggered on the sides. The pedestrian lights are full cut-off LED fixtures to avoid glare; the street lights are similar in design to those on Clearwater Drive.

Tom Farmer of Terry DeWan Associates discussed the street trees, which are all 5 feet off the curb in the esplanade. They are salt tolerant, disease resistant and hardy. They are narrow, columnar and high-branching, to allow visibility for the businesses. There are a few flowering trees to be used at the gateways. He gave examples of the trees selected including maple, elm, katsura, ginkgo biloba, and cherry. There will be some low-maintenance plantings in the medians as well.

Mr. Laverriere said there are both raised and flush medians planned for the project. The raised portion will be cobbled with a border to frame the vegetation. The flush areas will be dark red pavement in an offset brick pattern.

Mr. Laverriere said the original stormwater treatment proposed was more of an underground vaulted system. They reviewed it and are now proposing more of a bio-filter system. This would consist of an

underdrain with filtering material and vegetation above it. This would allow water to be treated before it drains into the discharge system.

Councilor Orestis asked how that type of system holds up in the winter, especially with plowing.

Mr. Laverriere said all the plants are small perennial types and can take some abuse. This type of bio-filter system has been around for 5-8 years. They are incorporating it a little differently. The swale tends not to freeze up solid since it is a free-draining material; they designed it so that, if the system can't infiltrate fast enough due to storm conditions or it is filled with snow, runoff will go into the catch basin just like it does today.

Mr. Laverriere presented an aerial photo of the project area, indicating the locations and types of street trees as well as the medians and where they propose changes to existing driveways. He also presented some simulations showing what it will look like with the proposed improvements.

Mr. Laverriere discussed the project costs. The proposed improvements, including traffic signals, sidewalks and esplanades, landscaping, street lighting, infrastructure necessary for the underground utilities (pipes, manholes, etc.), stormwater infrastructure and treatment comes to a little over \$7 million. There are utility fees for the utility companies to move their utilities underground, install transformers, decommission the overhead lines and reconnect all the customers. Including CMP, Fairpoint, Time Warner, Oxford Networks and OTT these costs come to \$3.4 million. Numbers for several of the utilities are still unconfirmed at this time. The original estimate for underground utilities was \$6.2 million; they are currently at \$6.5 million. Miscellaneous fees including engineering, legal services, etc. is at \$450,000. Including contingencies, the project budget currently stands at \$11,699,945.00. Potential additive bid alternatives include a sidewalk, lighting and vegetation for Fundy Rd and Clearwater Drive, an esplanade filter on Depot Rd, lights and fixtures for Bucknam Rd, underground services to the businesses south of Waldo's, ornamental signal mast arms, and a ROAM system to allow the Town to have more control over the street and pedestrian lighting. Prices for these items range from \$10,000-75,000. The goal is to put the project out to bid this winter, so that construction could take place in 2014. Plantings could continue into spring 2015. DOT would then install new paving in 2015.

Councilor Farber asked if the bid alternatives have been prioritized. Councilor Anderson said they have not, but they will do that in the future.

Chair Pierce noted that they came in right on budget. The recent sidewalk project that was recently done came in 25% under budget. They are hoping they can lower these in the bidding project.

Councilor Anderson thanked the project team and the town staff for their work on this project. The CDC is asking if the Council is ready for them to go out to bid.

Councilor Mahoney asked if the proposed stormwater system has been used in this way in Maine before.

Rob Woodman of FST said they have done some work with the Long Creek watershed. There has been a similar system installed on Darling Avenue in South Portland. That system was a little simpler than this.

Councilor Mahoney asked if a big flush will overwhelm the system and go into the catch basins.

Mr. Woodman said it will. The majority of stormwater techniques are designed to treat the first inch of runoff, which doesn't even match up to a 2-year storm. Anything more than that will overflow to the catch basin. In the winter when the system is covered in snow, the system will be same as it is today.

Councilor Mahoney asked if the system would have been different with the original proposal.

Mr. Laverriere said the originally proposed systems would only have treated the first inch as well. Water quality measures are for the first flush only, though that represents a high percentage of annual rainfall.

Councilor Mahoney said this design won't catch the first flush when it's frozen. Mr. Laverriere said the material is free draining, so it tends not to freeze solid. Runoff will still enter the system and infiltrate, though perhaps not as quickly as it would in warmer months.

Councilor Mahoney asked the price differential between this system and the original proposal. Mr. Laverriere said it was substantial; the proposed system will save \$500,000.

Councilor Mahoney wondered where that savings is going. Mr. Laverriere said some items went up, some went down.

Councilor Farber asked if this system has less capacity than the originally proposed system. Mr. Laverriere said the goal was to treat the same area; they are treating a total of 4 acres of impervious area with this design. The bio-filter areas are each placed immediately before a catch basin, but they are not located at every catch basin along the route.

Councilor King asked if the water that flows directly into a catch basin would be treated before it flows into the creek; Mr. Laverriere said no.

Councilor Anderson said that currently every single drop of runoff flows into the creek untreated. This is a substantial upgrade from what is there now, which was their goal.

Councilor King wondered how this would compare with the original design.

Chair Pierce said the original design would have treated exactly the same amount of water, just in a different way. This design is more environmentally friendly and more cost effective.

Mr. Woodman said this system was also easier to locate than the large concrete treatment tanks originally proposed, and is easier to maintain.

Councilor King wondered to what extent this system will mitigate the issues of polluted runoff for the creek. Mr. Laverriere said the system would be comparable to what the DEP would require of a site developer. Most pollutants are contained in that first flush, which will be treated by this system. It was hard to say what impact this would have on Webes Creek since this will treat a small portion of the area that impacts the creek.

Councilor Mahoney said when they were looking at a storage component they had the ability to store, treat, and release the contaminants in a more measured way. He was concerned that the bio-filter strips wouldn't be able to handle the amount of water and thought maintenance would be critical.

The consensus of the Council was to move forward with the bidding process.

Item 10 Order to authorize the Town Manager to apply on behalf of the Town for Federal and State financing assistance under the provisions of both the U.S. Forest Services Community Forest and Open Space Conservation Program and the Land for Maine's Future Program, for the acquisition of four parcels bordering the North Falmouth Community Forest.

Councilor King moved the order; Councilor Orestis seconded.

Public comment period opened; no public comment.

Councilor Orestis thought the majority of the purchase price would come from these grants.

Bob Shafto, Open Space Ombudsman, agreed that it could.

Councilor Goldberg asked how the snowmobile trail would be severed.

Mr. Shafto said the trail crosses one of these lots, which is currently private property, and the owner wants the trail moved. The topography of the land in that area makes it difficult to relocate the trail. This is a key trail segment leading people from Falmouth to the Interconnected Trail System.

Councilor Orestis asked if the trail would be a large component of the grant proposal.

Mr. Shafto said it could be; both grants look for recreational use of the property. He won't know what the appraised values are for the properties until the appraisals come in, but an educated guess leads him to estimate them at \$410,000. The Forest Service Grant will pay up to 50% of the total amount, including the appraisal. Land for Maine's Future (LMF) doesn't put a limit on it, but the Town should have significant amount committed to the project. It doesn't have to be cash though; they can apply the Forest Service grant if they have it toward that, or the value of any easement they lay on North Falmouth Forest. He felt LMF is geared more toward northern Maine these days; it is being used as a rural economic development tool, so they can attract more hunters and sportsmen to those areas. The Forest Service grant application is due January 15; the LMF application is due in March. He felt the review process for both will be fairly close together.

Councilor Goldberg asked if the Forest Service grant is binding.

Mr. Shafto said no; nothing is binding at this point. They could turn down a grant if it was awarded.

Councilor King asked if he is applying for all the four pieces together. Mr. Shafto said that was his goal.

Councilor Goldberg asked what the plans would be for these properties. Mr. Shafto said there are plans for trails on the properties.

Mr. Shafto said this is the biggest piece of contiguous forest in Falmouth, and it extends into Windham and Gray. This kind of habitat is rare and very important.

Motion carried 7-0.

Item 11 Resolution to adopt open space management plans as presented by the Land Management Advisory Committee (LMAC).

Councilor Mahoney spoke about the work that has been done on the proposed management plans.

Caleb Hemphill of LMAC spoke about the activities on and goals for the open space properties including the Riverpoint Conservation Area, Suckfish Brook Conservation Area, North Falmouth Community Forest, Blackstrap Hill Community Forest, Hadlock Community Forest, Falmouth Community Park and Town Forest, East Branch Conservation Area, Woods Road Community Forest, and the Falmouth Nature Preserve.

Councilor Farber moved the resolution; Councilor Mahoney seconded.

Councilor Mahoney encouraged people to review the management plan summaries; it was clear that future Council action could be necessary for some of them. He felt one of the challenges was going to be to educate people that forest management requires them to cut trees. While this wouldn't look good in the short term, it would have benefit in the long term to establish the types of habitat they want. This represents best practices. He thanked Mr. Shafto and the committee for their work on the summaries.

Councilor Farber wondered how they wanted to communicate with the public regarding cutting trees. She asked the committee to think about how they would inform the public regarding when and where harvesting would take place.

Councilor King asked if this is a vision or if it is stronger than that.

Councilor Mahoney said it is a clear directive to staff that this is the way we intend to manage the properties.

Councilor Anderson felt they had a real asset and they are dealing with it effectively. He was concerned with the logging. Hadlock looks terrible. This is land that they bought for open space conservation. He didn't understand bringing in heavy equipment to cut down mature trees and create habitat that isn't there currently.

Councilor Mahoney said some of the property was acquired with the goal of managing the forest. He agreed that logging to recognize commercial value made no sense, but if there is a thoughtful plan behind it he supported it. The management plan doesn't say they would harvest the entire property, but thin certain areas to bring back habitat that was there in the past. He agreed that maybe they could do a better job than what was done in Hadlock. The plan requires future Council action where there is to be harvesting.

Chair Pierce wondered what the resolution was referencing, the summaries or the plans included in the notebook that was provided to the Council. She asked that the language be changed to reflect the summaries and that the summaries be attached.

Councilor Mahoney suggested adding to the third resolve "...to the Town Council *including those set forth in the summaries as presented to the Council on December 9, 2013...*"

The Council discussed the plans and summaries with town staff.

Chair Pierce said she would be comfortable if the executive summary was packaged in the management plan so that it was all one piece.

Councilor King moved to change the first sentence of the last paragraph of the summary as follows: "*With the implementation of these management plans, nearly half (44%) of Falmouth's **town-owned** open space properties will be left forever wild*" in order to clarify that this is referencing Town-owned land only, and not Land Trust property. Councilor Farber seconded. Motion carried 7-0.

Resolution carried 7-0.

Item 12 Discussion about future Council agendas.

Councilor Farber moved to suspend Council rules in order to cancel the December 23 Council meeting; Councilor Goldberg seconded. Motion carried 7-0.

Councilor Mahoney moved to cancel the regular meeting on December 23 and to not hold a regular meeting during December, per Section 1 of the Town Council Rules; Councilor King seconded. Motion carried 7-0.

Town Manager Nathan Poore reviewed future agenda items.

Adjourn

Councilor Anderson moved to adjourn; Councilor King seconded. Motion carried 7-0.

Meeting adjourned 10:01 pm.

Respectfully submitted,

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Melissa Tryon

Recording Secretary