

MINUTES
CUMBERLAND TOWN COUNCIL MEETING
Town Council Chambers, 290 Tuttle Road
Monday, March 13, 2006

7:00 p.m. – CALL TO ORDER

Present: Chairman Stiles, Councilors Damon, Kuntz, Storey, Moriarty, and Porter
Councilor Kuntz arrived at 7:05 p.m.

Excused: Councilor Turner

I. APPROVAL OF MINUTES

February 27, 2006

Motion by Councilor Storey, Seconded by Councilor Porter, to accept with amendments stated.

VOTE: UNANIMOUS 5-0 (Turner absent and Kuntz out)

II. MANAGER'S REPORT

Manager Shane stated that the remediation work at the library is nearly complete. Exterior projects will begin in the next few weeks, to be completed in a few months. The Manager hopes the result will be a “clean bill of health” for the library.

The Manager reminded the Council that the Code Officer’s issuance of Notices of Violation results in either resident compliance or consent agreement. Those consent decrees must then be approved by the Council. The Manager noted that there will be three to five consent decrees presented within the next month. If landowners do not cooperate, the Council may pursue the option of an 80K which is an enforcement of the zoning ordinance through legal system.

Manager Shane commented that things are still going well with trash and recycling and he plans to present in further detail at the next meeting. He also noted that bags are still being sold at Town Hall and Public Works continues to house a reserve supply available to local businesses.

III. PUBLIC DISCUSSION

Ms. Sally Merrill, Vice President, and Ms. Cordelia Lane, President, of the Cumberland Farmers’ Market were present to update the Council on the Market’s tenth year of business. Although the market is currently held in both Cumberland and Falmouth, the Cumberland location has long been considered the “Flagship,” but Mrs. Lane noted that it “actually has been lagging the last few years.” She added that the Market plans to increase advertising and events of entertainment value to families as well as to expand into other markets outside of the usual season such as a harvest market before Thanksgiving and a second Yule Market on Cumberland Common. She thanked the council for past support and requested continued support in this year’s budget. Mrs. Lane noted, “If every person in Cumberland were to spend just ten dollars at the Farmer’s Market it would keep in excess of \$150,000” in the local community. Councilor Porter indicated that prior donations from the Council were not spent and asked for the amount sought by the market this year. Mrs. Lane and Mrs. Merrill requested \$1,000. Councilor Damon commented on the effective use of signs in advertising the

market. Councilor Porter asked when the advertising would commence. Mrs. Lane responded early to mid May as the opening date for the Cumberland market is June 17th and the Falmouth market is May 24th.

IV. LEGISLATION AND POLICY

06 – 033. To hold public hearing to consider and act on an Off-premise retailer with Malt & Wine license for Basil Provisions, 137 Main Street for the period 03/06 – 03/07.

The Town Manager indicated that the license is complete and ready for action and Staff recommends approval No public comments.

Councilor Porter moved, and Councilor Storey seconded, to approve an off-premise retailer with Malt & Wine license for Basil Provisions, 137 Main Street, for the period March, 2006 – March, 2007.

VOTE: UNANIMOUS PASSAGE 5-0-1 (Councilor Kuntz abstained)

06 – 034. To hold public hearing to consider and act on amendment to Zoning Ordinance Section 204.6.2 (Local Business district) to add Religious institutions as a special exception use, subject to Site Plan Review.

The Town Manager gave a brief history of this proposal noting that Realtor Rachel Cooney has requested a zone change in the LB district on behalf of her client. The land in question is a four acre parcel located in the LB District of Route 100, Gray Road and presently run by a communications business. Manager Shane informed the Council that churches are not currently permitted in any of Cumberland's Commercial or Industrial Zones; however, they are permitted in every residential zone. He added that commercial zones equal 5% of the land area in the entire community, typically found along Route 100 and Route 1. The Manager concluded by noting that a Route 100 Corridor Advisory Committee, chaired by Councilor Moriarty, has been established and is working to set guidelines for zoning along Route 100. He expects their work to be complete sometime this fall.

Chairman Stiles opened the public hearing. Realtor Rachel Cooney requested the Town Council ratify the Planning Board's unanimous vote to add religious institutions to the LB zone. She noted that Gray, Yarmouth, Freeport, and Chebeague Island currently allow churches in this zone. Ms. Cooney outlined the benefits to the Town as "an open door policy to all members of the community...provide a safe place for members to worship...moral support... free religious education...and community meeting space." She added that The Chinese Gospel Church is unique in that it provides cultural diversity to the Town while allowing the current communication business to continue operations. It will also become the only Chinese Church in the state of Maine.

Mr. Han Chung, one of five deacons of the church, has lived in Cumberland over three years with his wife Su. He stated his primary function as a Deacon is to locate a building in which the Church could operate. He has searched for over two years to find a building that meets the Church's requirements of size, location, parking and budget. They believe this location is superior in all of those areas. Mr. Chung noted that the building inspection and lease agreement processes were complete, as well as the majority of the mortgage application. The only outstanding issue is the

proposed zone change. Mr. Chung noted the unique features of the Church such as its bilingual services, bible, and hymn book. The Church will hold only one service per Sunday and will eventually add prayer meetings, Sunday school classes, choir, and a more substantial English Sermon in order to include all residents. He thanked the Council for their time and assured that, if granted, the church would be good neighbors and members of the community, adding “We will try to patronize other” Cumberland and corridor businesses.

Councilor Damon asked if there is church representation on the Route 100 committee and suggested that they are welcome to attend the meetings. Councilor Moriarty added that the next committee meeting is Tuesday the 4th of April.

Ms. Sally Merrill expressed strong support for the special exception. She believes that it is time to diversify the community. “It’s time to be good neighbors...and I would be very pleased if they would be my neighbor.”

Ms. Chris Hilton, resident of Cumberland, stated that she has worked with members of the Church and praised them as “dedicated, honest, and of high integrity.”

Mr. Rob Gregory introduced himself as a Youth Pastor at the Church. He and his wife have worked with refugee resettlement in the Portland area for 30 years. For the last seven years, he has worked with the Chinese Church. He commented that Maine hosts many other nation churches and these local congregations play an important role “in making the melting pot” a possibility. Mr. Gregory hoped for the Council to add their consent to that of the Planning Board.

Mr. Jason Thaxter, son in law to Mr. Chung and a Cumberland resident, highlighted the issues of tax impact and zoning variation. This proposal is “a relatively small variation that does add an element of variance to the town that isn’t here right now.” Mr. Thaxter noted that in a long term perspective, segregating businesses from the rest of town is not always effective. He identified the problem of zoning policies that aren’t wise enough to distinguish between what contributes to sprawl and what contributes to communities. Mr. Thaxter encouraged the Council to allow for natural variance and avoid segregating businesses from the community. He noted that there are wise variances and unwise variances, and “this is in the category of wise”

Councilor Porter opened the Council discussion by clarifying that this request is not a variance, and if it were, his opinion may be different. “This proposal is a zoning change. 95% of this community is now open to the church but this location is not.” While he agreed with the lack of diversity in the state and Cumberland, he felt that “what Cumberland is missing right now is taxable valuation” on the commercial side. Councilor Porter could not support this request due to the tax ramifications. He feels it is necessary to “protect what limited area we have in this community for business. It’s the only way we’re going to be able to modify the impact of the increases that are coming on the tax side.” Councilor Porter wished to clarify that while he wholly supports the church in the community, the location presents a concern for the aforementioned reasons.

Councilor Damon supports this zoning change since the current business will continue to operate there and pay taxes. Manager Shane informed the Council that parsonages are exempt for the first \$20,000 and the rest of the church property is tax exempt. Churches are unlike non-profits, whose uses have to be specific, and that which is not tied to the use is taxed. The only differentiation for assessing purposes is between the parsonage and the church property. Any occupied part of the space

will be tax exempt. Councilor Damon commented, "I just can't see a lot of churches coming out here and relocating. Worse things could happen."

Councilor Moriarty agreed with Councilor Porter that a zoning change is more than is strictly necessary to allow this Church to purchase this property and proposed a contract zone "that leaves the rest of the LB zone untouched." He noted that a contract zone allows just this church to operate at that location. Councilor Moriarty urged that the contract be specific to this particular congregation and not transferable and asked the Church to consider whether they would agree to pay to the town that tax revenue that would be assessed against the one half of the building that would be leased for commercial purposes. He added that this would allow them to both own and rent the property and for the Town to keep at least a portion of the property on the tax roles while the Church owns it. Manager Shane commented that the Planning Board had not considered this condition.

Councilor Damon stated that she would support Councilor Moriarty's proposal if, at some point that taxed portion was taken over as part of their religious institution, they would not have to continue to pay the taxes. Councilor Moriarty concurred. Councilor Porter asked why this would not be considered "spot zoning?" Councilor Moriarty said the answer is not clear or perfect. There is another church already in the LB zone. He felt that there is something to be said for the diversity this church would bring to the Town and State. Councilor Porter then asked how the Council would define the public benefit. Councilor Moriarty again spoke to the diversity factor. "We allow religious institutions in 95% of our land area" so that is an established policy. The LB zone is largely residential today and the "church fits in nicely with that existing development pattern." Chairman Stiles added that the Church will also offer classes in language which he feels is a public benefit. The Manager noted the benefit of contract zoning is that it eliminates the Board of Appeals step in the process. Chairman Stiles added that he is not against the idea, but would table it for the benefit of the Route 100 Corridor.

Realtor Rachel Cooney noted that tabling this item would "essentially kill the purchase and sale agreement" which must be resolved by May. Councilor Kuntz made the point that the purchase and sale agreement was initiated in late December, which was before the Route 100 Committee was formed. He added that he was married in the church that is presently in that LB zone and feels that "religious institutions have been the rock that built this country." Councilor Kuntz agreed with Councilor Moriarty's proposal. "That's a win-win situation for both parties." Mr. Gregory stated that he is also a land use attorney and that the Church's "intention from the beginning was that the property would have been taxed...our intention was to pay the taxes as they would have accrued." He added that the group "just had a quick meeting and concurred." Councilor Moriarty asked if this proposal will need to go back to the Planning Board. Manager Shane answered affirmatively, because it is a contract zone agreement. The earliest Planning Board meeting they would be able to meet public notice requirements for is April, but that would still leave the issue of site plan approval. Councilor Moriarty asked if there are any proposed changes to the site. Ms. Cooney's response included taking down some interior walls and adding a bathroom and possibly a kitchen at some time in the future, as well as any other changes that would be required by the Town. She added that parking is sufficient for the number of people in the congregation, but will be changed to meet site plan review if necessary. Councilor Porter asked why the Council couldn't define what they wish to see in the contract zone as site plan review will have to meet those contract zone restrictions. The Town Manager answered that the application will say these are the requirements and ask for less restrictive requirements which usually deal with setbacks. Councilor Damon questioned if this would require a site plan review even if the Council made the zone change tonight. Manager Shane

answered if the zone change was made tonight, it is a special exception. Councilor Damon asked if the local business zone is only on Route 100. Manager Shane confirmed. Councilor Damon felt that “if they’re willing to pay the tax implications,” we should create the exception. Councilor Kuntz felt that contract zoning is the best option for the Town and the Church. If it goes to the Board of Appeals and gets “shot down” time is lost. It also guarantees that the business portion will stay on the tax roles.

Councilor Moriarty indicated that there are 2.5 months left to explore this fully. “We have two more meetings of our own before the Planning Board meeting.”

Councilor Moriarty moved, and Councilor Kuntz seconded, to authorize the Town Manager to begin contract zone negotiations with the Chinese Gospel Church, in accordance with the Council’s discussion tonight, to include some sort of tax consideration for that portion of the building which will be leased for commercial purposes for the foreseeable future; and to ask the Town Manager, secondly, to report back on 3/27 and again on 4/10 if necessary. Councilor Moriarty expanded upon his motion to refer a possible contract zone to the Planning Board for consideration at its meeting on 4/18 for their recommendation and to take this up again at the second April meeting, 4/24, by which time the Planning Board will have had the opportunity to consider whatever contract we come up with in the meantime.

VOTE: 5-1 (Councilor Porter opposed)

Mr. Gregory asked when the completion date will occur under that scenario. Manager Shane answered that Council action will complete Monday, April 24th, site plan review will then occur. Mr. Gregory asked if it is possible for the site plan review to occur concurrently with the Council’s review. Manager Shane said that it would be a “huge condition.” Mr. Chung added with regard to tax payments, “we have drafted our lease” with the existing tenant, who would pay their share and then we would pay the Town. The current agreement states that the Church will only use a quarter of the space and the remaining three quarters would be used by the current business. Chairman Stiles asked if Mr. Chung fully understood the motion as presented. Mr. Chung answered “I understand the payment of the tax. We ask the business to pay the tax.”

Councilor Damon asked if there is a probability that the Planning Board would not have the site plan review until May 16th. She added, if “we can get all these things in place I would support it.” Chairman Stiles called for a vote on Councilor Moriarty’s motion to create a contract zone which will “enable us to collect taxes of the commercial venture and to refer to the Planning Board and report back.”

06 – 035. To hold public hearing to consider and act on amendments to Zoning Ordinance Section 606 re: Contract Zoning to more clearly define the contract zoning process.

The Manager stated that he, Councilor Moriarty, and Councilor Turner have been reviewing the Zoning Ordinance for possible revisions due to its difficulty to interpret. Their changes help to formalize the process for applicants with additional language. Manager Shane stated, “We’re here tonight to ask you to approve this.”

No public comments received.

Chairman Stiles referred to the language re: a clear public purpose or benefit. "I believe it was our intention to delete "clear."

Councilor Moriarty moved, and Councilor Kuntz seconded, to amend section 606 of the Zoning Ordinance relating to contract zoning and delete the word "clear" from the last line of sec 606.1

VOTE: UNANIMOUS 6-0

06 – 036. Nominating Committee Appointments to Prince Memorial Library Advisory Board, Lands & Conservation Commission, Personnel Appeals Board and Twin Brook Advisory Committee.

Councilor Porter read the list of appointments:

David Fenderson - Prince Memorial Library Advisory Board
Alan Kissack and Anne Witte - Twin Brook Advisory Committee
Jim Higgins, Samuel York and Robert Bruder – Lands and Conservation Commission
David Fenderson and Robert Bruder – Personnel Appeals Board

No public comments

Councilor Porter moved, and Councilor Kuntz seconded, to approve the slate of nominations as presented by the Nominating Committee.

VOTE: UNANIMOUS 6-0

06 – 037. To set public hearing date of March 27, 2006 to consider and act on a Victualer's License for Suburban Little League.

Councilor Moriarty moved, and Councilor Kuntz seconded, to set a public hearing date of March 27, 2006 to consider and act on a Victualer's License for Suburban Little League.

VOTE: UNANIMOUS 6-0

06 – 038. To forward to the Board of Adjustments & Appeals, amendments to Zoning Ordinance Section 414 re: Home Occupations for its review and recommendation.

The Town Manager deferred to Councilor Moriarty for the presentation of this item. Councilor Moriarty stated that he and Councilor Turner met with the Board of Appeals in a workshop session to review these changes and receive their input and feedback.

Councilor Moriarty moved, and Councilor Kuntz seconded, to refer amendments to Section 414 of the Zoning Ordinance re: Home Occupations to the Board of Adjustment and Appeals for its review and recommendation.

VOTE: UNANIMOUS 6-0

Councilor Damon asked if this includes home bakeries. Manager Shane said they will not be listed specifically by use, but could be considered as a home business based upon parking, etc. Home occupations are typically in residential zones. Councilor Moriarty added that the more specific you get, the more “problems and questions you raise, so the language is designed” to be generic. “I think a bakery would be covered.” Councilor Moriarty noted that the Council was not approving anything with this item, simply referring it for the Board of Adjustment and Appeals’ input.

06 – 039. To hear a proposal from David Chase to amend the Route One South Contract Zone and refer same to the Planning Board.

Manager Shane stated that Mr. Chase has a proposal for an 18 lot commercial subdivision located on Route One South. Mr. Chase was present along with his attorney and land consultant. The Manager added that this was not a public hearing, but a presentation. The Council’s role is to then refer the proposal to the Planning Board. He noted that the building setbacks are similar to the SeaFax proposal which were designed to meet Council concern. The Manager also stated that there is still some language to “clean up” and be reviewed by the Town Attorney. Chairman Stiles added that the Council has already held a workshop on this proposal.

Councilor Moriarty referred to the Declaration of Restrictive Covenant executed in conjunction with the settlement with Mr. Kennedy and approved by the Town Council on November 14, 2005 and asked what happens if the current contract zone agreement is replaced by the new one. Mr. Philip Gleason, attorney for Mr. Chase, responded that the Declaration will be of no further effect and the existing restrictions will terminate.

Mr. Tom Foley, representing True Spring Farm, asked if the existing blasting will continue for another year. The Manager mentioned Mr. Chase’s approval for extension of blasting. Mr. Foley said that he understood from that approval that there would be one more blast that would complete the work on that parcel. Manager Shane stated that the conditions imposed by that extension would be enforced. Mr. Chase commented that there is one more blast to do on that particular parcel which is 2.9 acres. He added that the entire property is about 50 acres. He was given six months to one year to finish reclaiming, grading, seeding and loaming and the Board of Appeals approval would be wrapped up “very shortly” on that specific parcel. Mr. Foley asked about the additional work and whether there will be another public hearing, stating “We simply want to understand what’s going on and be in full understanding.” He added that he is pleased Mr. Chase cooperated with the inspections at the True Spring Property so “there will be a baseline” for the inspections going forward.

Councilor Damon noted that meeting notices will be mailed to residents within 500 feet of the parcel and Manager Shane added that residents within 2000 feet had been given the opportunity to be placed on a call list to be notified prior to blasting.

Councilor Kuntz moved, and Councilor Storey seconded, to refer the proposal by David Chase for an amendment the Route One South Contract Zone to the Planning Board for its review and recommendation after review by the Town Attorney.

VOTE: UNANIMOUS 6-0

V. **NEW BUSINESS**

Councilor Damon - none

Councilor Storey – none

Councilor Kuntz – none

Chairman Stiles – Extended an invitation to a Good Friday Community Leadership Breakfast to the rest of the Council. He added that he, Manager Shane, and Councilor Damon recently attended the Joint Committee Hearing Deliberation of the Chebeague Island Secession, at which a unanimous vote was reached to move forward with the process.

Councilor Moriarty – Commented on the discussion regarding Council compensation at a recent budget workshop. He noted that the current stipend is specified in the Charter, but can be changed by ordinance, does not require a charter change.

Councilor Porter – none

Manager Shane – Informed the Council that Chris Mosca, Greely High School Principal was elected as Principal of the Year for the State of Maine.

ADJOURNMENT

Councilor Kuntz moved, and Councilor Damon seconded, to adjourn to workshop.

VOTE: UNANIMOUS 6-0

TIME: 8:30 pm

VI. **WORKSHOP** – Budget FY07

Respectfully submitted,

Nadeen Daniels, CMC
Town Clerk