

Planning Board Meeting - Minutes
Tuesday, June 16, 2009
Cumberland Town Hall
290 Tuttle Road, Cumberland, Maine
7:00 PM

A. *Call to Order*

The meeting was called to order at 7:00 p.m.

B. *Roll Call*

Present: Bill Ward, Board Chair, Bill Richards, Vice-Chair, Bob Couillard, Chris Neagle, Pam Russell, Bob Vail

Absent: John Ferland

Staff: Carla Nixon, Town Planner, Pam Bosarge Board Clerk

C. *Approval of Minutes*

Mr. Neagle moved approval of the minutes of May 19, 2009.

Mr. Richards seconded.

VOTE: Unanimous

D. *Consent Calendar / Deminimus Change Approvals:* Skillin's Greenhouse Stormwater Plan.

Ms. Nixon presented background information as follows: When Skillin's received site plan approval last fall to construct two greenhouses the question of stormwater was raised. The Board granted conditional approval asking that the applicant provide further information on stormwater management within six months or, if the owners decided to go forward with a complete master plan for the property, to come back with that. Due to the economy, the owners are not planning to do a master plan at this time. Therefore, their engineer submitted the required information and Al Palmer (town engineer) reviewed and approved the plan.

The Board reviewed the plan and agreed it was sufficient for the existing use. If changes are planned, the applicant would need to re-submit a new plan.

Mr. Neagle moved to approve the deminimus change for Skillin's Greenhouse stormwater plan.

Mr. Vail seconded.

VOTE: Unanimous

E. *Hearings and Presentations:*

1. Public Hearing: To review and make recommendations to the Town Council regarding the proposed Zoning Map Changes for the Shoreland Zoning Resource Protection.

Mr. Ward stated at last month's meeting Mr. Longley gave a presentation and the Board had discussion regarding the Shoreland Zoning text and Resource Protection Overlay district.

Ms. Nixon stated due to state statute, the town was required to advertise and notice the date to set a public hearing for adoption of the new shoreland map. This was not done, so the ordinance was considered and approved at last month's meeting and the map portion is before the Board this evening.

Ms. Nixon stated the new Resource Protection designation would require a 250' setback for any new development. This map has one change and that is an expanded area of the RP zone around Knight's pond. The property owner, Mr. Paynter, was present at last month's meeting and expressed concern about the loss of value for his property. Ms. Nixon told the Board that Mr. Paynter requested a field determination from the state on the status of Knight's Pond because there is a manmade dam structure that has contributed to the creation and now enlargement of the pond. There is an exemption under the Shoreland provisions for manmade ponds. Last week, Ms. Nixon joined a site walk with a state field biologist, the owner, his attorney to see if a reclassification could be made. While the biologist stated she would not be the one to make a final determination, she did say that her observation is that the area is a very high value natural habitat resource. A decision is expected within two weeks.

Mr. Vail asked if this is forwarded to the Council would the adoption be effective July 1, or thirty days after approval. He voiced concern of preventing the homeowner from creating a lot prior to the adoption.

Ms. Nixon stated Mr. Paynter is aware of this, but has chosen not to obtain a building permit in advance of the July 1 date.

Ms. Russell stated there have been drainage issues in this area because of the beavers, if the beaver dam lets go any culvert work on Greely Road Extension would be wiped out. The pond is probably five times the size of the public safety training room (the meeting was being held in) and 6' or more deep. The only thing keeping the pond contained is the beaver dam. Ms. Russell stated she consulted with the Manager and understands beaver dams are controlled or maintained by the land owner.

Mr. Moriarty, Town Council stated with Hurricane Bob in 1981 the beaver dam washed out, as he recalled it wasn't hugely damaging.

Mr. Neagle stated the beavers will go away based on the natural life cycle; he is willing to support the change. He again voiced concern that he would like the stream protection to be shown in the utility areas of the maps, i.e. pipe lines.

Ms. Nixon stated this is a GIS mapping issue, and she will talk with our mapping consultant to remedy the problem.

Mr. Richards stated there is a brook that crosses Pleasant Valley Road that runs off into a small pond, this is a significant watershed area.

Mr. Neagle stated by definition brooks aren't protected but streams are.

Mr. Couillard asked if Mr. Paynter could take action against the dam owner for devaluing his property value or if the dam could be removed.

Ms. Nixon stated the Biologist stated anyone who might tamper with this now would need a DEP permit.

Mr. Ward stated this is a State issue.

Mr. Neagle stated we can only act on the current plan.

Mr. Vail stated all property owners have changed hands since the inception of the pond.

The public portion of the meeting was opened. There were no public comments. The public portion of the meeting was closed.

Mr. Neagle moved to recommend to the Town Council the adoption of the map changes to the Shoreland Zoning Resource Protection, and asked for a best effort to show stream protection on the power lines.

Mr. Richards seconded.

VOTE: 5 in favor (Neagle, Richards,
Russell, Ward, Vail)
1 opposed (Couillard)

2. Public Hearing: To review and make recommendations to the Town Council on draft text amendments to Section 204.18 Fairgrounds Overlay District of the Zoning Ordinance. To add the following language:

.20 Concerts

.21 Para mutual Horse Racing

Ms. Nixon reviewed Mr. Shane's letter as follows: The Town Council recently held a workshop with the Cumberland Farmers' Club and abutting neighbors to discuss adding the uses listed to the Fairgrounds Overlay District of the Ordinance. The neighbors concerns related to noise, safety in cross walks, hours of operation and frequency of events. These issues can all be addressed as part of the Mass Gathering Ordinance administered by the Town Council.

The Council debated the wording with the original language from the Council Ordinance subcommittee being:

.20 Musical Concerts of a type, style, and character commonly and historically associated with those offered during the annual Cumberland County Fair.

.21 Para mutual Horse Racing

Then changed at its June 1, 2009 meeting to read:

.20 Concerts

.21 Para mutual Horse Racing

The Farmers' Club stated the current schedule of events and aligning the concerts with outdoor weather conditions would restrict the concerts to the summer months. Three to at most four events would be possible given their current event schedule. The Council clearly stated that each event would be evaluated and reviewed under the Mass Gathering Ordinance and the Town's ability to staff the vent with Public Safety personnel.

Mr. Couillard asked for clarification on Para Mutual Horse Racing.

Mr. Bruce Flanigan, representing the Farmers' Club stated it is horse racing with live betting during the race. Para mutual is on-site betting as opposed to simulcast which is off facility betting.

Mr. Flanigan stated due to the turmoil within harness racing facilities there is a possibility that racing dates might open up and give the Farmers' Club the opportunity to have racing other than during the fair.

Mr. Ward asked Mr. Moriarty, Town Councilor for any thoughts or guidance.

Mr. Moriarty stated the current overlay district was adopted in 2002, with the intent of allowing the Cumberland Farmers' Club to remain viable with uses other than the annual fair. This spring there was a request to host a Toby Keith concert; the Council had discussions pro and con regarding the fit of such a concert within the existing language. A video of the meeting in 2002 at the adoption of the Overlay District stated there was no intent to host rock concerts. The Ordinance Committee which consisted of Mr. Moriarty and George Turner, drafted the original language; discussions at the Council arrived with the language (concerts) with no specifications or reference to style etc. The Council vote was 6 to 1, with Mr. Moriarty being the only dissenting vote. Mr. Moriarty stated his concern with the proposed language is the possibility for the Fairgrounds to become an open ended concert venue. He understands the Farmer's Club does not intend to eliminate any current events such as the craft fair, and there are several open weekends in which a concert could be scheduled. Any concerts would require a Mass Gathering permit from the Council. This is a major change to the Ordinance and there is no immediacy to act tonight, the Board has the option to act, delay, or workshop the issue.

Mr. Bruce Flanigan, Cumberland Farmers' Club stated he was approached by the organizers of "Live Nation" to host the Toby Keith concert. The Club needs to find ways for additional revenue. Last year's fair revenue was down due to two days of bad weather.

Mr. Richards asked about a definition for concerts.

Mr. Moriarty stated the Council decided it shouldn't be deciding on the style of concerts, such as rock, or only country.

Mr. Neagle stated this is an interesting discussion; and agreed the town shouldn't legislate the type of music, but instead rely on the Farmers' Club's judgment; it is not our business to define what is appropriate.

Ms. Russell stated she watched the Council meeting and agreed that the original wording was too limiting; this is a great opportunity to encourage diversity and allow additional revenue sources for the Farmers' Club.

Mr. Couillard agreed, and asked about safety concerns.

Mr. Flanagan stated the parking lots are mapped and for a Mass Gathering permit they can specify the number of cars and people per car etc. Emergency and traffic plans written for each event; the Farmers' Club knows the limits of the facility.

Mr. Couillard asked about time.

Mr. Flanagan stated the Tobey Keith concert would have been from 7:00 p.m. to 10:15 or 10:30 p.m.

Mr. Vail stated the Fairground has previously had spring and fall horse racing, which is an historical use that doesn't exist today. Mr. Vail stated the crux for the Planning Board is to protect the public from over burdening the nearby neighborhoods and town resources.

Mr. Neagle stated the Mass Gathering permit process seems to deal with traffic, safety etc., and allows the Farmers' Club the discretion on what type of concerts.

Mr. Flanagan stated they anticipated 20,000 for the Pumpkin Fest, and the plan for the Tobey Keith concert was 12,000 tickets.

Mr. Neagle asked what the ticket sales were on the busiest day at the fair.

Mr. Flanagan stated 11, 000 to 13,000.

Mr. Richards asked for clarification on the Board's request for this evening----can we can accept, deny or revise?

Ms. Nixon stated yes.

Mr. Neagle stated the Planning Board is an advisory Board that provides a recommendation to the Council, who can accept or amend their recommendations.

The public portion of the meeting was opened.

Mrs. Dorothy Milliken of 167 Blanchard Road stated her questions had been covered; at the Pumpkin Fest the noise level seemed to increase in the evening.

Mr. Steve Moriarty, Town Council stated the Mass Gathering Permit is a good tool and directed towards addressing public safety, it does not address sound and hours. The Town does not have a noise ordinance.

Mr. Neagle recommended the Council look at the Mass Gathering Ordinance regarding addressing items such as noise, hours of operation; he recommended the Board address the draft presented at this meeting.

The public portion of the meeting was closed.

Mr. Ward stated he is sensitive to the issue of noise, parking and hours of operation; he has a cottage on a lake which has considerable noise.

Mr. Neagle moved to recommend that the Town Council add the simple terms .20 concerts and .21 Para mutual horse racing and recommend that the Council as soon is as reasonably possible, review the Mass Gathering Ordinance to make sure issues like noise, hours of operation, alcohol, etc. are addressed through that ordinance.

Mr. Richards asked to separate items .20 and .21.

Mr. Neagle made three motions as follows:

Mr. Neagle moved to ask the Council to look at the Mass Gathering Ordinance to add standards to review things such as noise and hours of operation.

Ms. Russell seconded.

VOTE: Unanimous

2. Mr. Neagle moved to add Para mutual horse racing .21 to the list of defined uses in Section 204.18 Fairgrounds Overlay District.

Mr. Richards seconded.

Discussion:

Ms. Russell stated she would like to see a definition added to the definition Section of the Ordinance.

Mr. Neagle stated if there is no definition, it is defined by the meaning of the words in plain English. Mr. Flanigan has explained that Para mutual horse racing means onsite betting at the track. Mr. Neagle agreed if the Council wants to add a definition to clarify that it would be a good idea.

Mr. Neagle amended his motion to: To recommend to the Town Council to add Para mutual horse racing .21 to the list of defined uses in Section 204.18 Fairgrounds Overlay District and the Council should consider adopting a definition for Para mutual horse racing and add the definition to Section 100 Definitions of the Ordinance.

Discussion: None

Mr. Richards seconded.

VOTE: Unanimous

Mr. Neagle moved to recommend to the Council to add .20 concerts.

Mr. Couillard seconded.

Discussion:

Mr. Vail stated due diligence requires the Board to review anything that comes before them; part of that is to make sure there is compliance with the Comprehensive Plan. This is not a land use action and isn't outside of the scope of what the Fairgrounds already does. As the reviewing authority this evening, it is a burden of the Board to examine the consequences of our actions. It would have been helpful to have the mass gathering ordinance in the packets to answer most of their questions.

Mr. Neagle amended his motion to: To recommend to the Council to add .20 concerts, provided necessary changes are made to the Mass Gathering Ordinance to address issues like sound, and hours of operation.

Mr. Vail seconded the amendment.

Discussion: Mr. Richards stated he felt we needed some definition of concert.

VOTE: 5 in Favor (Neagle, Russell, Ward,
Vail, Couillard)
1 Opposed (Richards)

F. Administrative Matters:

Ms. Nixon stated the Comprehensive Plan Committee has finished reviewing and writing the chapters required under State statute; books have been provided to the Committee members, Planning Board and Town Council. We will be scheduling a joint workshop for the Town Council, Planning Board, and Comprehensive Plan Committee in July. Ms. Nixon stated a tentative date was July 2nd and asked about availability. There were several members unavailable on that date. Ms. Nixon will confirm a date and e-mail it to Board members.

G. Adjournment:

Mr. Vail moved to adjourn at 8:10 p.m.
Mr. Couillard seconded.

VOTE: Unanimous

The meeting was adjourned at 8:10 p.m.

A TRUE COPY ATTEST:

William P. Ward, Board Chair

Pam Bosarge, Board Clerk