

MINUTES

Cumberland Town Council Meeting
Town Council Chambers

MONDAY, October 26, 2009

WORKSHOP 6:00 p.m. with the Lands & Conservation Commission and Land Trust re: conservation easements on property located on Range Way.

7:00 p.m. – Call to Order – Chairman Copp, Councilors Turner, Perfetti, Porter, Storey-King, Stiles and Moriarty.

I. APPROVAL OF MINUTES

October 12, 2009

Motion by Councilor Turner, seconded by Councilor Moriarty, to approve the minutes.

VOTE: UNANIMOUS PASSAGE 7-0

II. MANAGER'S REPORT

III. PUBLIC DISCUSSION

IV. LEGISLATION AND POLICY

09 – 169 Fire/EMS Department recognition awards presentation and swearing in of Lieutenant Gerald Croce.

Fire Chief Small stated the majority of the department employees joined him this evening. The department has worked diligently since the Fire/EMS merger to provide excellent service. To date, thirteen firefighters have completed the EMS training. Police Chief Charron added, "It's a privilege" for his police officers to participate in the EMS training. "I think it's a big huge value," added to our services. The training and has "been useful and life saving" in some instances. Chairman Copp expressed council appreciation. Town Clerk Daniels provided the oath of office to Lieutenant Croce.

09 – 170 To authorize the Town Manager to reinstate the Senior Reassurance Program through the Fire/EMS Department.

Councilor Stiles presented on behalf of the Breaker Subcommittee. Fire/EMS Chief Small explained he has recommended the Senior Reassurance Program be reinstated to allow our senior citizens the ability to "phone in and let people know they are ok." If we received no call, a police officer or paramedic will visit the home to ensure the individual is in no harm. The program will be reinstated without a budget impact. Crucial to the program is the use of a "knox box" which allows the department to gain entry through a secured access. The resident is contacted by phone first and if no contact is made a police officer can gain entry through the use of the knox box. Councilor Storey-King added the only expense which may occur is the purchase of the knox-boxes, and the committee anticipates use of the circuit breaker funds for any required purchases. Chief Small showed an example of the knox box. The police department has overseen the program in the past, and the Fire/EMS merger will allow the department to utilize their 24/7 staffing. The program is an important program that should be provided seven days a week. Councilor Storey-King added the committee does not anticipate a "huge number of people" enrolling because the onus is on the resident to call us. There will be a dedicated answering machine for these calls. No public comments received.

Councilor Porter asked for clarification on the process. Fire/EMS Chief Small replied the fire/ems department will receive a call and police officers dispatched as needed. The cost includes a purchase cost of \$159 and a small mounting bracket cost. Councilor Storey-King explained this program was provided previously when Cumberland had its own dispatch center. She shared her positive impression of the Fire/EMS department's initiative to reinstitute this program. Councilor Perfetti requested the Circuit Breaker Subcommittee review this program annually.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to authorize the Town Manager to reinstate the Senior Reassurance Program through the Fire/EMS Department.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 171 To hold a Public Hearing to repeal the existing Dog Control Ordinance and replace it with an Animal Control Ordinance.

The Town Manager introduced Animal Control Officer Charles Burnie and stated the council is requested this evening to repeal the existing Dog Control Ordinance with an Animal Control Ordinance which more accurately addresses the true nature of the ACO's responsibilities. There is no "pressing" time concern to adopt this ordinance other than reaching compliance with new state laws and surrounding community matters.

Councilor Moriarty questioned whether the control of livestock is dependent on a local ordinance or covered elsewhere. ACO Charles Burnie responded that livestock is addressed in M.R.S.A. Title 7.

Motion by Councilor Porter, seconded by Councilor Moriarty, to repeal the current Dog Control Ordinance and replace it with the Animal Control Ordinance as recommended by the Ordinance Committee.

VOTE: UNANIMOUS PASSAGE 7-0

Chairman Copp addressed Item 176 next.

09 – 176 To receive a report from Gorrill-Palmer Consulting Engineers re: the Route 88 drainage & paving project and to authorize the engineer to proceed with the project design as recommended.

Consulting Engineers Al Palmer and Tom Gorrill were present to provide a recap of the project and review design criteria for the roadway. Site tours were held October 17th and 24th. Neighborhood meetings were held at town hall and at a neighborhood home. The existing roadway is paved over concrete with a paved area ranging from 24 to 26 feet wide. The existing concrete is 18-20 feet in width and there are areas with "nonexistent" shoulders. The whole corridor "is characterized by poor drainage characteristics." The concrete panels have separated at the center line. Drainage improvements will connect into existing storm drains or extend or enhance what is in place currently. The proposed typical section is an 11 foot travel way and a five foot shoulder, accommodating both bike and pedestrians on both sides. In some areas, bituminous asphalt is proposed for curb protection of poles and minimization of pole relocation. The curbed section will have a five foot shoulder, under drain and six foot widening to accommodate the shoulder and storm water drainage. The schedule consists of a December 1st submission to the town and MDOT for review; a February 1st advertising of the project for bidding purposes; and a spring season construction. They anticipate the council will address the bonding issues at its December meeting and consider authorization to move forward with the project.

Town Manager Shane shared the town originally felt this project was a bike/pedestrian project, but it has become more apparent that “this is a drainage project. Our rules regarding drainage are impacting quite a few people. I think we’ve come together with a project that will take care of some real serious concerns” and provide safety for our residents, with connectivity to the center of town. The drainage “took over the project” and “will result in an increase in the cost,” which is likely to jump from 3.5 to 4.5 million dollars due to the drainage issues.

Ms. Yavinsky, 16 Ole Musket Road, agreed that drainage is a major issue. She questioned the PACTS review and Yarmouth’s funding approval from the state for Route 88 improvements. She also believes 2.5 million dollars per mile is high. Is the increase due to the drainage accommodation issues or another reason? The Manager explained the PACTS estimates had no engineering behind the cost estimate. “There’s no investigation, no survey.” The Yarmouth project bids came out several hundred thousand dollars over estimate and the project has no drainage components. “How they got their funding, I don’t know.” The only difference is the volume of traffic. We went through the same process as Yarmouth did, and were turned down. That road is on a “do nothing list” with the State as well as PACTS organization. Ms. Yavinsky mentioned the “movement to include roundabouts” on many state highways, asking whether the town is considering this option. “Not as part of this project. Our traffic volumes don’t warrant it and we’d have to take land for that to happen” replied the Town Manager. Ms. Yavinsky questioned whether the council will submit this project to referendum. Councilor Perfetti replied that the citizens have the capability to initiate a referendum already. Councilor Porter used the analogy of a contractor who provides an estimate based on past jobs. The initial PACTS project transformed from one level to another level. “I have no issue...being supportive of this. There’s never really a good time.” Recent project estimates have come in much less than anticipated; however, the concrete slab is “going to make this a more expensive project.” Councilor Stiles added the council will receive the information and determine how to proceed when the numbers are finalized. “We’re not anywhere near that.” The drainage issues are the town’s problem and need to be addressed. Chairman Copp stated the engineers have alerted the town to more serious problems than originally anticipated. “They have to put their stamp on this project. I guarantee you we will get better pricing than we will in two years.” Councilor Turner added that the project has been discussed and considered for quite some time and he agrees the cement underlayment continues to create problems. The drainage issues have been a problem for some time “and have got to be done, period.” The Range Road project produced a final bid at “about half of what we were expecting” and he agreed the economy will likely produce a more favorable price for this project. A modified version which does not address the drainage will cost much more in the future. The state built this road but we find ourselves between a “rock and a hard place. We’ve got to the best of our abilities take care of priority” and this is a priority, Councilor Turner added. Councilor Storey-King noted the extension of the drainage improvements past Schooner Ridge has added to the project cost. Our clam flats are closed and likely will remain closed next year. We should consider what our non-source point pollution is and “have a better look at that with proper drainage.”

Motion by Councilor Porter, seconded by Councilor Turner, to authorize Gorrill-Palmer Consulting Engineers to proceed with the Route 88 drainage & paving project design as recommended this evening.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 172 To hold a Public Hearing to consider and act on a junkyard/recycler permit renewal for Cumberland Salvage for the period of October 1, 2009 – September 30, 2010.

The Town Manager indicated the application is complete and recommended approval. No public comments received.

Motion by Councilor Porter, seconded by Councilor Stiles, to approve the junkyard/recycler permit renewal for Cumberland Salvage for the period of October 1, 2009 – September 30, 2010.

VOTE: UNANIMOUS PASSAGE 6-0-1 (Chairman Copp abstaining)

09 – 173 To hold a Public Hearing to consider and adopt the revised MMA Model General Assistance Ordinance and Appendixes A-C for the period of October 1, 2009 – October 1, 2010.

The Town Manager explained this item represents the town's annual adoption of a General Assistance Ordinance. He further recommends the adoption of the Maine Municipal Association's Model General Assistance Ordinance with Appendixes A-C. No public comments received.

Motion by Councilor Perfetti, seconded by Councilor Moriarty, to adopt the revised MMA Model General Assistance Ordinance and Appendixes A-C for the period of October 1, 2009 – October 1, 2010.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 174 To hear a report re: November 3, 2009 Ballot Question 2 (Excise Tax) and Question 4 (TABOR).

Town Manager Shane reviewed ballot Questions 2 and 4 re: excise tax and TABOR II. Councilor Porter recommended the two questions be separated for discussion purposes. Councilor Perfetti recommended the council adopt a resolution opposing the excise question. Councilor Moriarty believes describing the proposal as a tax reduction measure "is disingenuous." Councilor Porter added, "This referendum is a wolf in sheep's clothing. The rest of you get to subsidize the purchase of my new vehicle. It's pretending to be tax relief...it's a tax shift. I'm hopeful that most people will see through this one." Chairman Copp added that excise savings on an \$80,000 Cadillac hybrid will transfer costs to those who can least afford it. Councilor Turner added he is generally hesitant to sign on to any universal statement by the council, but feels strongly enough about this item to do so. Councilor Perfetti added, "The roads still need to be repaired." Councilor Stiles noted the town has spent the last four to five years reducing town services. "We're getting down to the point where there's not much more to reduce." The only real alternative is increasing property taxes.

Councilor Perfetti read the following Resolution and moved its passage; seconded by Councilor Stiles.

VOTE: UNANIMOUS PASSAGE 7-0

Whereas, vehicles less than six years old would see a reduction in the excise tax ranging between forty and seventy percent, while vehicles six years old and older would see no change; and

Whereas, 68% of vehicles statewide are six years old and older and would see no change in their excise tax; and

Whereas, passage of this referendum would result in an approximate 40% reduction in auto excise tax revenue received by the Town of Cumberland; and

Whereas, the auto excise tax is the third largest revenue source supporting Town General Fund operations, providing the Town with approximately **\$1.3 million annually**, an amount which would be reduced by \$530,000 thousand under this proposal; and

Whereas, auto excise receipts, when coupled with road assistance funding received from the State of Maine, **are less than** the amount spent annually by the town for summer and winter road maintenance; and

Whereas, to replace this lost revenue through property taxation would require the town to increase its property tax rate by **46 cents per thousand** of assessed value; and

Whereas, given the cuts already made in Dispatching, Assessing, Code Enforcement, Police, Public Works, Library Services, town hall operating hours and other staff positions from the previous year's budget in order to maintain a stable tax rate, a reduction of the proposed magnitude would require the elimination of additional municipal services and staff;

NOW, THEREFORE, Be it resolved by the Cumberland Town Council that:

The Town Council urges citizens to study carefully information on this ballot issue and to consider the serious consequences of choosing between further reduced municipal services or the significant increase to property taxes, both of which will be necessitated by passage of the ballot issue. The undersigned Town Councilors hope that citizens will join us in voting "NO" on Question 2 the excise tax proposal on November 3, 2009. Dated This 26th Day of October 2009 at Cumberland, Maine

The council next addressed Question 4, TABOR II. Councilor Stiles stated that "everything falls down hill" and the town has done a superb job living within the limits established by LD 1. If passed, the state will reduce their funding to us and we will also likely encounter an increased county assessment. Chairman Copp stated several "good employees" have lost their job in the past few years under an attempt by the town to keep tax increases in control. Councilor Porter is very leery of telling one level of government how to operate, however, "This does affect us here at the municipality level. This is a very easy one for me." He expressed worry over what this initiative will do to the town of Cumberland services. Services will be cut - the cuts made have not been "cuts in name only." Councilor Perfetti believes the law is an opinion piece to "restrain excess growth. People want the services that we provide." He described it as "foolishness" to mail an individual ballot question notice to each voter. This takes us from a representative democracy to a direct democracy. Voting on "every single issue just doesn't work." Expressing reservation with a council resolution on this question was Councilors Storey-King and Turner. Councilor Storey-King stated she "can't sign this resolution tonight. We only have our vote to send messages. I'm just not comfortable with it." She described her personal interactions with state government as enormously inefficient. "We want them to look at their budgets as closely as we look at ours. I don't like to vote from a place of fear. This law has a whole lot of common sense missing but I can't encourage residents to vote one way or another." Councilor Turner agreed, noting that many residents are "really fed up" and "will vote for it just to send a signal. I can't bring myself to suggest to them that they shouldn't send a signal. I'm not about to vote for TABOR," but can not sign a resolution to encourage people one way or another. Councilor Moriarty believes TABOR casts a very broad net and brings us into the same arena with state government. "That, I think, is wrong. The numbers show we have done our job properly." Our habits have been His opposition stems from the fact the net extends so large that we are brought in the mix. I don't want to be drawn into the same milieu as the same spending habits as we see in Augusta.

Mr. Ted Chadbourne suggested there are residents who wish to know the positions of their elected officials and he asked the council to acknowledge the council is not all of one mind, but a significant majority opposes TABOR. Mr. Bob Vail stated he appreciates the difficulty of this issue and the work done by the council. He identifies with the council, but doesn't find that to be the case in Augusta. He is confident the council will put forward a representative and responsible budget for this community. Councilor Porter encouraged the council to consider a vote on a Resolution opposing TABOR II. Councilor Storey-King asked what happens with the resolution document and the Manager noted it becomes part of the town record.

Councilor Stiles moved; seconded by Councilor Perfetti, to approve the following resolution opposing TABOR II.

VOTE: PASSAGE 5-2 (Councilors Turner and Storey-King opposed)

The following Resolution was read by Councilor Porter:

Whereas, the Town Council opposes the so-called TABOR II question that will appear on the November 3, 2009 ballot, which would significantly modify current limits on State spending and on the municipal property tax levy; and

Whereas, the spending and levy limits established in LD 1 have been achieving their stated goal of reducing the tax burden on Maine citizens; and

Whereas, the requirement that state spending above the spending limit and most tax increases be subject to approval at a statewide referendum will increase both state and local expenses and move toward a system of budgeting by referendum which, as shown by experience elsewhere, is an ineffective way to make budgetary and service level decisions; and

Whereas, By establishing the current year as the basis from which future state spending increases are to be calculated, state spending, particularly for the highway fund, will be starting from a depressed level reflecting the impact of the current recession; and

Whereas, Tax policy, budgets, and service levels are best decided through the core processes of representative government where the people elect individuals and charge them with the responsibility of making decisions based on data, analysis, debate, and public opinion while balancing the need for services and expenditures that address the common good with the ability of citizens to pay for such services.

BE IT RESOLVED BY THE CUMBERLAND TOWN COUNCIL THAT we urge all citizens to become fully informed on this proposal prior to the November election by becoming familiar with the language of the proposal and reviewing materials provided by those supporting and opposing this measure.

The undersigned Town Council members hope that citizens will join us in voting “no” on TABOR II, which is Question #4 on the state referendum ballot for November 2009. Dated this 26th day of October 2009 at Cumberland, Maine

The Town Manager offered his appreciation to Cape Elizabeth Town Councilor Anne Kayatta-Swift for crafting and sharing Cape Elizabeth’s own resolution.

09 – 175 To set a televised Workshop date of November 9th at 6:00 p.m. to discuss the Rines Forest Management Plan (Phase One Harvesting).

Town Manager Shane stated the town is prepared to begin the first cut at the forest. He has requested the consultant to address the council at a televised workshop on November 9th.

Motion by Councilor Stiles, seconded by Councilor Moriarty, to set a televised Workshop date of November 9th at 6:00 p.m. to discuss the Rines Forest Management Plan (Phase One Harvesting).

VOTE: UNANIMOUS PASSAGE 7-0

09 – 177 To set a Public Hearing date (November 9th) to consider and act on amendments to the following sections of the Cumberland Shoreland Zoning Ordinance:

- Section .4 (Effective Date)
- Section C (Non-conforming Structures)
- Section E(3) (Effective Date)
- Table 1 (Land Uses #26)
- Section O (Timber Harvesting)

The Town Manager noted these amendments are all housekeeping matters.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to set a Public Hearing date of November 9th to consider and act on amendments to Sections .4, C, E (3), O, and Table 1 of the Cumberland Shoreland Zoning Ordinance.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 178 To set a Public Hearing date (November 9th) to consider and act on approval and adoption of the 2009 Town of Cumberland Comprehensive Plan.

The Manager requested direction from the council regarding next steps. There have been several televised workshops and meetings to date. The council will receive an additional chapter, the Sustainability Chapter.

Chairman Copp would like to see this plan move forward. Councilor Turner stated he supports moving forward, but has reservations with the Sustainability Chapter. Councilor Perfetti recommended moving forward and addressing the issues during the hearing. Councilor Moriarty agreed to move forward and requested a workshop or public hearing on November 9th, followed by action at the November 23rd meeting. “We ought not” rush this in two weeks time. “The document is a very solid document, but we don’t have to adopt everything in it. It’s a framework. We need to keep the ball rolling. We’re certainly reaching the end of where we need to be.” Councilor Turner agreed that language could be changed at the next meeting. As long as there is discussion he supports moving forward with a public hearing.

Motion by Councilor Perfetti, seconded by Councilor Porter, to set a Public Hearing date of November 9th to consider and act on approval and adoption of the 2009 Town of Cumberland Comprehensive Plan.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 179 To set a Public Hearing date (December 14th) to consider and act on a land swap and Conservation Easement on property located on Range Way and encompassing over 140 acres.

A workshop was held at 6:00 p.m. this evening to discuss this item. The Manager explained the town owns three “spaghetti string lots.” The Lands & Conservation Commission recommends the town give up these three parcels in exchange for an easement in perpetuity over Mr. Norton Lambs’ 147 acre parcel. Mr. Lamb has requested to retain ten acres of land for future residential construction. Hunting and passive recreation uses present today will continue. The Manager requested council authorization to work with the land trust. Chairman Copp indicated a site walk of this property is scheduled for November 8th at 9:00 am. Sunday was chosen because this property is utilized extensively for hunting. Mr. Chadbourne expressed concern with the possible appearance of “giving away land without competitive bidding. Some think a 30 acre land of wood can not be managed at a profit. I know better. I’ve managed woodlands all my life. I don’t think we should look away from opportunities for income. I call this a give away.”

Motion by Councilor Porter, seconded by Councilor Turner, to set a Public Hearing date of November 23rd to consider and act on a land swap and Conservation Easement on property located on Range Way and encompassing over 137 acres.

VOTE: UNANIMOUS PASSAGE 7-0

V. NEW BUSINESS

Councilor Turner – no items.

Councilor Perfetti – attended the Employee Appreciation Luncheon – a great staff serving us; Recreation Committee met recently – has two new members from North Yarmouth; Village Center Committee selected a Chair and Vice Chair – reviewed geography and zones and are ready to begin with grappling with the issue at hand of land use.

Councilor Porter – attended Employee Appreciation Day - a fun day and played golf with some of the police officers; Village Center Committee moving along – nice to see people who want to serve the town – committee is a diverse group; attended a very good meeting with No. Yarmouth and MSAD 51 re: budget issues - he and others met with Superintendent Hasson today re: seeking additional students outside Cumberland.

Councilor Storey-King – attended Recreation Committee meeting - we need at least two more Cumberland residents on that committee; reminded residents of the bonfire at Twin Brook on Thursday evening – it is open to public, held on the Greely Road side, and starts at 6 pm; Saturday night is Halloween – Police Department party at Greely Middle School from 5:30 to 8:00 p.m.

Chairman Copp – will add the Small Wind Energy Ordinance on the next agenda to hear a presentation and set a public hearing; also attended the Employee Appreciation Party - Dan Burr was voted as Employee of the Year but could not make the vent because he was attending a compost school on behalf of the town; Saturday is first day of deer hunting - please wear fluorescent clothing; bulky waste week is over, no items should remain beside the curb.

Councilor Stiles – Cumberland Bears – 5th and 6th grade football team won the Harvest Bowl; next Saturday they play for the state title in Portland; early voting is going well. .

Moriarty – no items.

Town Manager – Range Road is paved and striped at eleven feet with two foot paved shoulder; it is much safer now; having issues with some forgetting the stop sign at Bruce Hill and Range Road; great meeting with Veterans Monument Committee; RFP for Moss Side Cemetery monuments; early voting has been very successful with 74 voters on first day; the surveys suggest the early voting is a big success; early voting held during regular town hall business hours and Saturday 9-noon.

VI. ADJOURNMENT

Motion by Councilor Storey-King; seconded by Councilor Perfetti, to adjourn.

VOTE: UNANIMOUS PASSAGE 7-0

TIME: 9:34 pm