

MINUTES

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, April 27, 2009

6:00 p.m. WORKSHOP re: a request for shore access at the Town Landing Road (Workshop held in West Wing of Town Hall)

7:00 p.m. – CALL TO ORDER

Present: Chairman Turner, Councilor Copp, Perfetti, Storey-King, Porter, Stiles and Moriarty.

I. APPROVAL OF MINUTES

April 13, 2009

Motion by Councilor Stiles, seconded by Councilor Copp, to approve the minutes as amended.

VOTE: UNANIMOUS PASSAGE 7-0

At this point in the meeting, Chairman Turner and Councilor Porter expressed regret for the “rumors that abound” since the last council meeting relative to remarks made during the driveway license request public hearing. Councilor Porter apologized to Mr. and Mrs. Herman and Mr. Martin for “being so vehement” in responding to certain remarks made by Mrs. Herman. “Sometimes my passion gets the best of me and it definitely did that evening.” Chairman Turner added, “I’ve always had the utmost respect” for Ted and Waltrud Herman. “I made an indiscreet remark for which I apologize profusely.”

II. MANAGER’S REPORT

- The request by the Cumberland Fairground for a Mass Gathering Permit has been tabled. The council’s ordinance subcommittee plans to review the zoning ordinance as a result of this request.
- Community volunteers are working to create an inventory of approximately 160 Vernal Pools in the community.
- Tuttle Road Methodist Church will host a ‘Blizzards Buster’ recognition luncheon next week to thank the town’s public services employees for their service this winter season.
- Bulky Item Pick-Up week begins Monday 5/04.
- Mr. Bob Dyke donated an 1814 photo of the old Greely Road Schoolhouse. It served as one of the 6 school districts existing in North Yarmouth in 1814. The schoolhouse comprised District Six.

III. PUBLIC DISCUSSION

IV. LEGISLATION AND POLICY

09 – 059 To hear a report from Scott Lindsey of the Maine Department of Inland Fisheries & Wildlife re: feeding of wild animals.

Mr. Scott Lindsey, regional representative for the Department of Inland Fisheries & Wildlife, and Animal Control Officer Charles Burnie, were present to address concerns regarding feeding of wild animals. Feeding of wild animals can spread diseases among deer; attract predators and increase risk of death by coyotes or dogs; cause aggressiveness with deer at feeding stations; result in overbrowsing of local vegetation and ornamental plants; lead to increase in deer/vehicle collisions; and cause deer to lose fear of humans and become habituated to feeding sites. If a homeowner does choose to feed deer, Mr. Lindsey recommends the following: using the right food – apples, oats,

acorns; begin in the fall and end once green-up is observed; and set food out in multiple stations to alleviate competition. The best way to help deer in winter is to manage land for deer wintering cover. End feeding of birds on April 1 if bear is observed. Doe permits have always been "fairly numerous" in this district to manage deer population. Animal Control Officer Burnie indicated the town receives several complaints regarding feeding of deer, and more specifically, concerns related to deer tick infestation. The town has also received complaints regarding feeding of turkey and raccoons. A speaker indicated her husband contracted lyme disease which she suggested "is not to be taken lightly, and that's my problem foremost with feeding wildlife." Chairman Turner questioned if municipalities could adopt ordinances prohibiting feeding of wild animals. Warden Lindsey indicated the Town of Wells has adopted such an ordinance prohibiting the feeding of deer specifically.

09 – 060 To hold a Public Hearing to consider and act on a Victualer's License for Magee's Pantry to operate at the Cumberland Farmer's Market for the period April 27, 2009 – June 30, 2009.

No public comments received.

Motion by Councilor Porter, seconded by Councilor Moriarty, to approve a Victualer's License for Magee's Pantry to operate at the Cumberland Farmer's Market for the period April 27, 2009 through June 30, 2009.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 061 To hold a Public Hearing to consider and act on a Mass Gathering Permit for the Penobscot Valley Kennel Club Dog Show, June 19, 20 & 21, 2009, to be held at the Cumberland Fairgrounds.

No public comments received.

Motion by Councilor Moriarty, seconded by Councilor Copp, to approve a Mass Gathering Permit for the Penobscot Valley Kennel Club Dog Show, June 19, 20 & 21 2009, to be held at the Cumberland Fairgrounds.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 062 To countersign the M.S.A.D. #51 May 26, 2009 Budget Validation Referendum Warrant.

The Town Manager indicated the Town Clerk was presently attending the North Yarmouth Selectmen's meeting to acquire their counter signatures, and will return to Cumberland for the Town Council's countersignatures later this evening. Both districts must countersign the Warrants before posting.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to countersign the Warrant for the May 26, 2009 Budget Validation Referendum, seconded by Councilor Stiles. Councilor Storey-King recommended a vote be postponed until the clerk arrived with the Warrants. Chairman Turner announced postponement of the vote at this time.

(At a later time) Motion by Councilor Moriarty, seconded by Councilor Perfetti, to acknowledge receipt of the M.S.A.D. 51 May 26, 2009 Budget Validation Referendum Warrant and countersign the same.

VOTE: UNANIMOUS PASSAGE 7-0

Councilor Porter noted, "This is a procedural matter and in no way are we taking a position in one way or another." Councilor Storey-King added mention of the District Budget Meeting of

Thursday, May 21, 2009 “at which you may vote” on the school budget. This Warrant represents “the secret ballot that happens after that other public vote” of May 21, 2009.

09 – 063 To consider and act on the request received on 12/22/08 to establish a Village Center Committee.

Councilor Perfetti provided a written proposal to create a Village Center Committee. “My reasoning...hasn’t changed” since my initial proposal. Given the recent events around the Main Street Overture Referendum, “I think now is the time to do this.” He requested a vote to charge the new committee with considering, reviewing and recommending as follows: (1) the needs and wants of the current and future residents of Cumberland as it relates specifically to the geography proposed above; (2) review the history of the zone; (3) review the current permitted uses vs. current actual uses; (4) review the 1998 Comprehensive Plan, the most recent comprehensive plan survey and the 2009 Comprehensive Plan; (5) review and consider current and future best practices of land use and land use planning in town centers; and (6) to make a recommendation to the Town Council for action, either to change the zone or to leave it as is or some combination of action and inaction. If a change is recommended, what specific changes are recommended? Councilor Perfetti requests a final report from the committee to the council by December 1, 2009.

Mr. Dan Nuzzi, Main Street, asked that alternatives reviewed and proposed by the committee include no change to Main Street. “I like Main Street the way it is.” The committee should understand that “leaving it and the status quo would be one of the appropriate alternatives here. That needs to be made clear.” Councilor Perfetti responded, “There’s a very specific committee charge” which requests a recommendation for action “either to change the zone or leave it as it is or some combination” thereof. “I’m wide open to anything as I’ve indicated in the charge.” Councilor Moriarty indicated he has “warmed to the idea” of a committee as a result of “what we’ve accomplished with non-conforming uses.” He stressed the importance of giving the committee the necessary time to “study this in depth.” Chairman Turner concurred, adding, “it should be open-ended” and make “whatever recommendations it deems fit.”

Councilor Porter moved, seconded by Councilor Moriarty, to remove item 09-063 from the table.
VOTE: UNANIMOUS PASSAGE 7-0

Motion by Councilor Porter, seconded by Councilor Copp, to establish a Citizens’ Committee and authorize the Town Manager to advertise open seats for the Village Center Committee.
VOTE: PASSAGE 6-1 (Chairman Turner)

At this time Chairman Turner returned to the prior item for final action. Motion so noted under item 09-062.

09 – 064 To set a Public Hearing date (May 11th) to consider and act on a recommendation from the Planning Board to repeal and replace Section 501 (Non-Conforming Uses) of the Cumberland Zoning Ordinance.

Councilor Moriarty indicated the Planning Board is recommending the creation of a non-conforming use definition and changing the abandonment time frames to a two year abandonment period town-wide, except for residential uses, which is four years town-wide, without regard to district or zone. He recalled that Ronald Copp, Sr. raised concerns during the rezoning of Route 100 regarding long-standing residential properties which are now by virtue of the recent zone change located within a commercial zone. The Board of Adjustment & Appeals

felt these homes should not “be forced into being commercial” because of abandonment. Councilor Moriarty added that the Board of Adjustment & Appeals also felt if a current residential use became non-conforming “there would be very little likelihood, in fact, they would become commercial. And you’d end up with a bunch of dead zones of no use to anybody. So, the thought was give a residential property a longer period of time before it was deemed to have been abandoned.” Councilor Stiles asked why the board recommended a two year period for abandonment of commercial property, rather than four years. Councilor Moriarty responded that Planning Board member Christopher Neagle has extensive professional experience in land use and believes a four year abandonment period across the board was extraordinarily long. Councilor Perfetti stated while he agrees with the time periods, “Make it the same. I have a hard time with this as a policy. We’re saying this doesn’t target an area of town but we all have an area of town in mind that it targets, so it targets an area in town without really saying it. It’s a special exception to that area.” Councilor Moriarty responded the Route 100 committee were aware there were many residential uses within that zone and the continuity of those uses might provide a customer base for the smaller locally based businesses “and thereby you have a genuine village;” a mix of residential and commercial properties. The use of the term village reflected that thinking as well. Councilor Moriarty added there are residential properties in the Highway Commercial and Industrial Zones which “are technically non-compliant but which would be impacted by this change.” Thus, a home left vacant in either of these zones would not be deemed abandoned until four years as opposed to two years. So, it applies not just to the Route 100 corridor.

Motion by Councilor Stiles, seconded by Councilor Porter, to consider and act on a recommendation from the Planning Board to repeal and replace Section 501 (Non-Conforming Uses) of the Cumberland Zoning Ordinance.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 065 To hold a Public Hearing and set a June 9, 2009 election date re: Overrule Referendum.

The Town Manager indicated the council must hold a public hearing and set a referendum date for the citizens overrule initiative. He recommended an election date of June 9, 2009.

Mr. Dan Nuzzi, Main Street, thanked the residents who signed the petition to place the question on a ballot. He supported a June 9th election date as “appropriate” and “not making it separate out from any other normal election.” Chairman Turner encouraged voter participation, specifically noting the availability of absentee ballots. Councilor Porter suggested this “could provide \$20-30,000 dollars of taxable benefit to this community. This is an opportunity” for residents “to be heard once and for all on this issue. This is a time to turn out.”

Motion by Councilor Porter, seconded by Councilor Stiles, to set an election date of June 9, 2009 to hold a citizens’ overrule referendum and place the following question before the voters: “Do you support the town council’s action of March 9, 2009 to approve a contract zone request at 327 Main Street, Cumberland, to allow the operation of a credit union within the current residential zone?”

VOTE: UNANIMOUS PASSAGE 7-0

09 – 066 To hear a report from the Ordinance Subcommittee re: Shoreland Zoning.

Councilor Moriarty indicated a workshop was held last week on this “very large, very complex piece of legislation” involving the “point at which the no-build zone begins.” The Planning Board is reviewing the ordinance at this time and will forward its recommendations to the

council. Councilor Stiles suggested a committee workshop prior to council action, given the “extensive” language involved in this change.

V. NEW BUSINESS

Councilor Copp – he has already seen wood, a computer monitor placed out for bulky waste pick-up; “they will not be picked up”; he recommended taking the items to Riverside Transfer Facility in Portland.

Councilor Perfetti – asked the council and manager begin discussing our valuation growth strategy for the upcoming years; our ability to add valuation to our property tax base is going to challenge our ability to provide services over the long term.

Councilor Storey-King – the fairground concerts could provide a public benefit by generating some excellent revenue for our booster organizations; we could fund all of our athletics through a couple of concerts.

Chairman Turner – reiterated his urging for voter attention to the overrule petition election; it’s very important to get an accurate representation of how the community feels about having a credit union on Main Street; get out and vote and exercise your absentee privileges if you will be out of town.

Councilor Stiles – reinforced the bulky waste concerns; town’s web site has information regarding what can be picked up; he knows several residents who have had lyme disease – it is a real situation; feeding the deer has a tendency to move the deer in the community.

Councilor Moriarty – we have extended hours at the brush dump through the month of May; 3:30 on Saturday afternoons.

VI. ADJOURNMENT

Motion by Councilor Moriarty, seconded by Councilor Stiles, to adjourn.

VOTE: UNANIMOUS PASSAGE 7-0

TIME: 8:43 p.m.

Respectfully submitted,

Nadeen Daniels, CMC