

# MINUTES

Cumberland Town Council Meeting

Town Council Chambers

**MONDAY, August 10, 2009**

**6:00 p.m. Workshop**

**7:00 p.m. Call to Order**

**6:00 – 6:30 p.m. WORKSHOP with the Town Attorney re: unsafe structures.**

**6:30 – 7:00 p.m. WORKSHOP to review Twin Brook Recreation Facility Use Policy**

**ROLL CALL – 7:00 p.m.**

**PRESENT: Chairman Copp, Councilors Turner, Porter, Storey-King, Stiles, and Moriarty**

**EXCUSED: Councilor Perfetti**

## **I. APPROVAL OF MINUTES**

July 27, 2009

Motion by Councilor Moriarty, seconded by Councilor Stiles, to approve the minutes as presented.

VOTE: 6-0 UNANIMOUS

## **II. MANAGER'S REPORT**

- Town Manager Shane reported that the dates for the Cumberland fair were incorrectly listed on the agenda. The correct dates are September 27, 2009 through October 3, 2009.
- The town will be looking at paving the first 2000 ft of Range road within the next ten days. The road will still be blocked off to new traffic for the rest of the year.
- Castlerock commercial subdivision off of route 100 is also scheduled to be paved.
- New Town Manager for North Yarmouth, Marnie Diffin will be starting today.
- The last item on tonight's agenda is very controversial item. The posted speed limits on Orchard Road, Bruce Hill Road, and Whitney Road have been changed. This item will be discussed further on in the agenda.
- We have had many issues on Knights Pond with flooding because of beavers. The water has been elevated some two to three feet because of the beavers. The water has now spilled into different neighborhoods and caused problems with our infrastructure. Private roads and driveways have been washed out because of this. We have received permission from IFW to remove the beaver dams. This work will be beginning by the end of this week.
- Brush dump fees were instituted on Saturday, August 8. A one day pass will be \$5.00; a season pass will be \$25.00.

## **III. PUBLIC DISCUSSION**

None

## **IV. LEGISLATION AND POLICY**

**09 – 123 To set a Public Hearing date (August 24<sup>th</sup>) to consider and act on authorizing the demolition of an unsafe structure located at 74 Valley Road, Tax Map R08A/Lot 16.**

Last February there was a significant fire on this property. The town has been working with the Police Department and other agencies to try to have the property secured and demolished. We have now asked the town attorney to get involved and will be starting the legal proceedings that are afforded us under law. Interested parties will be notified, and the Town Attorney will be sending notices to the them. If a public hearing is set two weeks from tonight, that is when the clock will start ticking on the 30 day notices. Hopefully by early October, the site will either be cleaned up by the mortgage holders; or by the town with the property liened to recover the cost for the clean up. August 24, 2009, is the date that we are recommending for the public hearing if the council decides to move forward.

Motion by Councilor Porter, seconded by Councilor Storey-King, to set a Public Hearing date of August 24<sup>th</sup> to consider and act on authorizing the demolition of an unsafe structure located at 74 Valley Road, Tax Map R08A/Lot 16.

VOTE: Unanimous 6-0

**09 – 124 To hold a Public Hearing to consider and act on a “blanket” Mass Gathering Permit for Twin Brook Recreation Area events.**

Manager Shane explained that this is an annual event. Mr. Landis informed the Council of five events being held at Twin Brook. The first event AYSO recreation soccer 8:30 – 11:30 every Saturday morning. The numbers are dropping. The recreation running all league meet is something that Twin Brook is hosting for all the school age children grades 1-5. Falmouth hosts this event in the spring and we typically host the event in the fall. This event is typically a 3:30 – 5:30 event on Wednesday, October 21, 2009, with a rain date of October 28, 2009. The next event is a cross country event which will be held October 25, 2009. This will be class A, B, and C. This race has been in this community for at least 20 years. The next event is the regional cross country race for colleges. The event will take place on November 14, 2009. Traffic management is one of the top priorities. The concessions are handled by the Lions Club at these events. The police department will be there as well as the EMS and athletic trainers. Fire/Rescue has been notified to be available. Bathrooms will be available in the new building as well as portable toilets. There are some revenues involved as well. The the college teams pay \$1,500.00, the state pays \$1,500.00, and AYSO is \$10.00 per player. We do not get any revenues from the cross country events.

Motion by Councilor Porter, seconded by Councilor Storey-King, to approve a “blanket” Mass Gathering Permit for Twin Brook Recreation Area events.

VOTE: Unanimous 6-0

**09 – 125 To hold a Public Hearing to consider and act on a recommendation from the Twin Brook Committee re: amendments to the Twin Brook Recreation Facility Use Policy.**

Manager Shane turned the floor over to council liaison Moriarty who explained that a workshop was held earlier tonight and there are several amendments that he would offer tonight regarding the Twin Brook rules. Councilor Moriarty moved the amendments individually as follows:

Motion by Councilor Moriarty, second by Councilor Stiles, to amend paragraph 11 small letter i of the existing rules by deleting the current first paragraph and substituting in its place the following language, “except as provided below, the use of open flames, charcoal fires, cooking fires, candles or other incendiary devices is prohibited at the Twin Brook recreation area. However, the use of gas grills shall be permitted within a 50 foot radius of the Tuttle Road shelter building area. Councilor Stiles reiterated the amendment is to allow gas grills outside the Tuttle Road shelter building area.

VOTE: Unanimous 6-0

Motion by Councilor Moriarty, second by Councilor Stiles, to amend paragraph 11 small letter m, by deleting the current first sentence, and substituting in its place the following: “Activities such as kiting, model rocket, and model airplane flying should take place in open pasture locations well away from any organized activities. The use of incendiary devices defined as, “any object or substance likely to cause fires, including explosives, fire crackers, fire works and sparklers is prohibited.”

VOTE: Unanimous 6-0

Motion by Councilor Moriarty, seconded by Councilor Stiles, to amend paragraph 11, small letter n, by deleting the current language and substituting the following, “picnicking is welcome while the facilities are open, and picnickers are responsible for picking up after themselves. Except as provided in sub paragraph i above, open fires, as well as heat sources for barbecuing or grilling are not permitted.”

VOTE: Unanimous 6-0

Motion by Councilor Moriarty, seconded by Councilor Stiles, to amend subparagraph 11 small letter o, to read as follows: “The facilities shall be open from 6:00 a.m. until 9:00 p.m. from April 1 to October 31, annually, and from 6:00 a.m. to 6:00 p.m. from November 1 to March 31, annually. No night time use shall be permitted without the express written permission from the Cumberland Recreation Department.

VOTE: PASSAGE 5-1 (Councilor Porter opposed)

Motion by Councilor Moriarty, seconded by Councilor Stiles, to amend paragraph 11 small letter r, to delete what is there and add the following: “Evening events such as stargazing with approved area astronomy clubs shall be permitted up to four times per year with the express written permission from the Cumberland Recreation Department. Abutter notification shall be required including cancelation or rescheduling of the event.”

VOTE: 6 Unanimous 6-0

**09 – 126 To hold a Public Hearing to consider and act on the reappointment of William Healey as Cumberland Tax Assessor for a three-year term, August 2009 – 2012.**

Town Manager Shane stated that he recommends this reappointment with extreme pleasure and pride. Mr. Healy does an outstanding job.

Motion by Councilor Porter, seconded by Councilor Stiles, to reappoint Mr. William Healey as Cumberland Tax Assessor for a three-year term, August 2009-2012.

VOTE: Unanimous 6-0

**09 – 127 To hold a Public Hearing to consider and act on setting the FY10 tax rate as recommended by the Tax Assessor.**

Tax Assessor Healy recommends that the tax rate be set at 14.55 for the fiscal year 2010. It has been a very difficult year to say the least. Typically, we see any where from 14 to 35 million in new values, this year, we barely saw 6 million in new values.

Motion by Councilor Stiles, seconded by Councilor Turner to set the municipal tax rate for Fiscal Year 2010 at \$14.55.

VOTE: Unanimous 6-0

**09 – 128 To hold a Public Hearing to set rates at which interest will be paid for delinquent and over paid taxes, and to authorize applying tax payments to the oldest unpaid taxes.**

Manager Shane explained that we have accepted the Maine Municipal Association's recommendation to set the interest rate at 9% and the refund rate at 5%. We are also recommending that all tax payments that are made be applied to the oldest outstanding tax first.

Motion by Councilor Porter, seconded by Councilor Moriarty, to adopt the interest rates recommended by Maine Municipal Association for overpayment and delinquent taxes for Fiscal Year 2109 ? as follows: 9% for delinquent taxes and 5% for overpayment of taxes. Be it further Ordered, all payments for taxes and personal property shall be applied to the oldest unpaid taxes.

VOTE: Unanimous 6-0

**09 – 129 To hear a report from the Finance Committee Chairman re: FY09 4<sup>th</sup> quarter financials.**

Finance Committee Chairman Stiles explained that the committee met with the Town and reviewed the current condition of the finances for the town. Finance Director Kimball explained that this has been a very difficult year. Half way through the year, we realized that we needed to make some cut backs. Last year we were about \$394,000.00 over in expenses, this year we are about \$116,000.00 over. Revenues gave us a problem this year. We have a variance of about \$58,000.00 for the year. Better than anticipated. We did budget for an overlay of about \$599,000.00. So what we ended up with for an actual overlay is \$424,472.00. One final piece, an interesting note, property taxes finished up with a collection rate of 98.10%. Councilor Storey-King commended the Town Hall and the Town Manager for a job well done during such a tough time economically. Councilor Stiles pointed out to the public that if they look at our income, a good part of our revenues come from excise taxes. If the excise tax bill gets passed, we will have to come up with those revenues else where, most likely property taxes. Chairman Copp asked if Manager Shane would like to comment on credit cards. Manager Shane explained that we are in the process of looking at a credit card payment system that would allow the public to come to the counter and use a credit card. We are still working through some of the intricacies. There would be a 2.5% fee that would be assessed directly to the credit card holder, not the municipality. The issue that we have with accepting credit cards for tax payments at the counter is the ability of the consumer to challenge charges and create problems for the tax lien process. We will continue to use the third party vendor that we use currently for tax payments.

**09 – 130 To hold a Public Hearing to set Sewer User Fees as recommended by the Town Manager.**

Town Manager Shane explained the new sewer user service fees. Annually, the sewer fees have increased for the past six years. This year is no exception. We have a small sewer system with approximately 1000 users currently. We have added about fifty new users within the last two years with our amnesty program. The operations cost is nearly \$800,000.00 a year. This fund is paid for as an enterprise fund, meaning that the people who use it pay for it. The rest of the taxpayers are not liable for it. To keep up with our expenses, Manager Shane recommends a 3% increase for this coming year. It looks like we will be able to hold that for probably a couple of years. This actually comes out to a \$2.00 a month increase for the average sewer user in our system. Mr. Mike Tardiff asked how many people have participated in the amnesty program. Town Manager Shane stated that the amnesty program has helped defray the costs; we had 17% increases for three years in a row. Now we are down to a leveling of about 3% increases. Town Manager Shane stated that the more people we add as users to the system, the more the cost burden is shared for the system.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set sewer user fees for the period of August 9, 2009 – July 30, 2010 as recommended by the Town Manager.

VOTE: Unanimous 6-0

**09 – 131 To hear a report from the Town Manager regarding the FY '10 Circuit Breaker Program.**

Town Manager Shane explained that we are basically going to have the same program as we had last year. Councilor Stiles explained that we are going to keep the age requirement at 67 years of age, and the available monies at \$750.00. The program is still going to be tied to the State's rent/refund program. We are going to put up signs encouraging citizens to apply for the assistance.

Anyone who needs assistance in filling out the forms may contact Tax Assessor Bill Healy.

Councilor Porter stated that we are not getting an acceptable amount of people applying for the assistance. Councilor Stiles stated that we still have a lot of people in this town that would not come forward for assistance because of pride. Councilor Porter feels that there is still more that could be done to encourage people to apply. Councilor Storey-King stated that she has requested that the application be put on the website.

**09 – 132 To hold a Public Hearing to consider and act on a Mass Gathering Permit for the Central Maine Kennel Club/Mid Coast Kennel Club dog show to be held at the Cumberland Fairgrounds August 27 – 30, 2009**

Motion by Councilor Storey-King, seconded by Councilor Turner, to approve the Mass Gathering Permit for the Central Maine Kennel Club/Mid Coast Kennel Club dog show to be held at the Cumberland Fairgrounds August 27 – 30, 2009.

VOTE: Unanimous 6-0

**09 – 133 To set a Workshop date of August 24<sup>th</sup> to discuss:**

- 1) **Town Center Advisory Committee Charge**
- 2) **Small Wind Energy System Ordinance**

Town Manager Shane recommended August 24, 2009, as the workshop date for both items; the Town Center Advisory Committee charge, and the Small Wind Energy System Ordinance, or windmill ordinance. This will be the preliminary discussion for the Council to decide if this is a policy that you wish to pursue or wait a little bit, until you get some more information.

Motion by Councilor Storey-King, seconded by Councilor Turner, to set a Workshop date of August 24<sup>th</sup> to discuss:

- 1) Town Center Advisory Committee Charge
- 2) Small Wind Energy System Ordinance

VOTE: Unanimous 6-0

**09 – 134 To set a Public Hearing date (August 24<sup>th</sup>) to consider and act on a Mass Gathering Permit and Victualer's Licenses for the Cumberland Fair, September 27 – through October 3, 2009 at the Cumberland Fairgrounds.**

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date (August 24<sup>th</sup>) to consider and act on a Mass Gathering Permit and Victualer's Licenses for the Cumberland Fair, September 27 – October 3, 2009 at the Cumberland Fairgrounds.

VOTE: Unanimous 6-0

**09 – 135 To authorize the Town Manager to file a creditor petition for probate of the Estate of David R. Garnett, 269 Gray Road, pursuant to 18-A MRS 3-203(a)(6).**

Manager Shane explained that some time ago, Mr. David Garnett passed away and there are no heirs to the property. We along with 3 other creditors are mortgage holders on the property. The property has been vacated and abandoned. This item gives Manager Shane the ability to work with other creditors and sell the property. Manager Shane stated that we do have a responsibility to the taxpayers in town to recoup the town's money that was invested in this property. Councilor Porter stated that he is a member of the board for PROP, and would have to recuse himself from the vote. Councilor Moriarty asked if the legal fees would come out of the sale proceeds. Manager Shane answered that yes, the fees would come out of sale proceeds. Councilor Stiles questioned what it is exactly the council is being asked to do. Manager Shane explained that this would basically authorize him to be executor of the property, and he in turn would put it out to sale to the highest bidder. Councilor Stiles asked if this a sharing of the funds? "Is it possible the town could get nothing out of this?" Manager Shane stated that no, it is not possible that the town will receive nothing. If we can sell the property for \$110,000.00, which it is worth easily, all creditors will be paid in full. Chairman Copp asked if this gives us the ability to evict the people who are there at the time. Manager Shane answered that the town has already put them on notice.

Councilor Storey King moved, seconded by Councilor Turner, that the Town Manager is hereby authorized to file a Creditor's Petition for Probate of the Estate of David R. Garnett, pursuant to Title 18-A of the Maine Revised Statutes annotated at § 3-203(a)(6) in order to protect the interest of the Town of Cumberland pursuant to its mortgage on certain premises owned by the late Mr. Garnett at 269 Gray Road in Cumberland, which mortgage is dated December 21, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23542, Page 184, in the original principal amount of \$25,000.00 and to take such further action as he may deem appropriate to secure said premises in cooperation with People's Regional Program, holder, directly and indirectly of three (3) other mortgages on said premises.

Vote: PASSAGE 5-1 (Councilor Porter abstained as he is on the board of PROP)

**09 – 136 To set a Public Hearing date (August 24<sup>th</sup>) to authorize the Town Manager to request from MDOT a reduction in the speed limit on Orchard Road and Bruce Hill Road and Whitney Road.**

MDOT has instructed the public works department to properly post the legal speed limits on these roads (45 mph). Manager Shane stated that the speed that is required to be posted is too high. It is not a safe speed for these roads. Manager Shane is requesting that we hold a public hearing on August 24, 2009, that would basically start the process to allow us to petition the MDOT to lower the speed limits to 35 mph. The public hearing gives the neighbors an opportunity to come out and voice either their support or their opposition for this. On Orchard Road, the town of North Yarmouth is going through the same proceedings on this issue, as they are also being impacted by these speed limits. Councilor Moriarty asked when and why the limits were increased. Manager Shane stated that the state came out and offered the public works departments sign packages. One of the conditions was that you had to post all of your roads at the proper speed limits. Once we picked up the package, we found out that according to MDOT these roads had been improperly posted for some time. The speed limits need to be put at the legally set limits, which were 40 and 45 mph. That is how this came to be. Public Works complied with this order. The police chief and Manager Shane will put advisory speed limit signs up as well until this can get resolved.

Motion by Councilor Stiles, seconded by Councilor Moriarty, to set a Public Hearing date (August 24<sup>th</sup>) to authorize the Town Manager to request from MDOT a reduction in the speed limit on Orchard Road and Bruce Hill Road, and Whitney Road.

VOTE: Unanimous 6-0

## V. NEW BUSINESS

**Councilor Turner:** Is there any update on the guardrail for Range Road? Manager Shane stated that he went out and walked the project and marked where he felt the guardrail was needed. To put too much guardrail on the road would kill the aesthetic of the road. This is a neighborhood road, not a highway. Councilor Turner stated that if there were no guardrails, the road with the improvements made will be significantly safer than it was previously.

**Councilor Porter:** None

**Councilor Storey-King:** Would like to put in a plug for local services. Family started using Dr. Chris Green on Route 1 in Cumberland Foreside. Congratulated Thomas Bennett on a grant that he was awarded. Clam license refunds were mailed out, thank you. I would like to recognize the passing of Ms. Anne Sheehan of Yarmouth. Ms. Sheehan was a teacher at Greely Junior High for several years. Where are we with the CMP sub station?

**Chairman Copp:** None

**Councilor Stiles:** Councilor Moriarty did a great job in the beach to beacon as did Sarah Trent from the forecaster. Has a new great granddaughter.

**Councilor Moriarty:** Following up on the chapter in the comprehensive plan by Carla about the traffic. Found the order of the chapter confusing. I would like to find the recommendations at the end of the chapter rather than the beginning. Found the whole thing out of order. Manager Shane stated that it would be very helpful to his staff if a meeting could be set up to discuss the structure of the document. Councilor Turner disagreed, feels that some people would want to just look at the recommendations without having to read the whole chapter. Councilor Porter stated that he feels this is exactly what he was looking for. What Carla put together is a vast improvement over what we had previously.

**Town Manager:** To follow up on the question from Councilor Storey-King regarding a CMP substation. Manager Shane explained that there is a proposal to build a new \$35,000,000.00 substation off of Greely Road, in the area almost behind Maine Line Fence all the way up to Greely Road. It is about a 17 acre site. They are planning to be before the Zoning Board in September, followed by an October Planning Board meeting. It could generate somewhere in the range of \$6,000,000.00 to \$10,000,000.00 in new property tax values. Manager Shane does not see final approval happening until probably the end of the year. Councilor Storey-King asked if any settlement had been reached with the four property owners of the property that CMP needed to acquire. Manager Shane stated that he believes they have reached agreements with the majority of them.

## VI. ADJOURNMENT

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

VOTE: Unanimous 6-0

TIME: 8:50 P.M.

Respectfully submitted,

Tammy O'Donnell  
Deputy Town Clerk