

MINUTES
CUMBERLAND TOWN COUNCIL MEETING
Cumberland Town Hall
Monday, October 8, 2007
6:00 p.m. – WORKSHOP
7:00 p.m. – CALL TO ORDER

6:00 p.m. **WORKSHOP** – To meet with Hockey Building Committee
re: future building site and update

Present: Chairman Porter, Councilors Copp, Perfetti, Turner, Stiles and Moriarty.

Excused: Councilor Storey-King.

I. APPROVAL OF MINUTES

September 24, 2007

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

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

II. MANAGER'S REPORT

- Harris Rd should be complete this or next week – includes a 10 foot culvert – eight bidders – hope to get it paved just before the paving plants close;
- Old Gray Road – drainage and tree work was scheduled; however, lowest bid for the tree removal work was over \$40,000 - meeting with residents in next few weeks to talk about going “in a different direction;”
- Employee Appreciation Day will be held Monday 10/12 at Val Halla at Noon. Town Hall will be closed for the afternoon of the event.
- Universal Waste Day held Saturday; high participation. Residents’ Bulky Waste pick-up will occur on their regular pick up day and completed town-wide within 8 to 9 calendar days;
- Absentee Balloting will occur on Saturday, October 20, 27 and November 3, from 9 to Noon at Town Hall;
- Rines Forest Committee will hold site walk at 9 am on 10/13;
- Request from the Falmouth Town Council to attend a GPCOG transportation presentation. Chairman Porter mentioned Falmouth Town Council’s earlier request for a joint meeting.

III. PUBLIC DISCUSSION

Mrs. Nancy Heyner sought information from the Manager regarding revising the town ordinances to require a permit for placement of signs during and related to an election. The Town Manager explained that he received complaints during the Forest Lake referendum election concerning the wording of certain signs referencing the Forest Lake referendum. The town attorney determined we have no control over signs placed within the right-of-way of state roads. Cumberland has a local sign ordinance governing placement of signs on town property and roads, but it does not extend to signs placed within a state road right-of-way. “Let us look into it” further, responded the Manager. If the town chooses to review this matter by committee, Mrs. Heyner volunteered her time.

IV. LEGISLATION AND POLICY

07 – 125 To set a Public Hearing date (October 22nd) for consideration of speed limit reduction request to MDOT for Greely Road (45 to 35 mph).

The Manager explained Greely Road is the only town road posted at a speed limit of 45 mph. The town has petitioned the state on three separate occasions to reduce the speed on Greely Road, to no avail.

Ms. Virginia Truesdale, 118 Greely Road, noted that Greely Road is posted 45 mph from Middle to Hillside Road. “I don’t see what that proves for anybody. There’s so much traffic and goes on...it seems like an accident waiting to happen. And it did happen.” Ms. Truesdale explained she was personally involved in a serious accident this summer when attempting to pull out of her driveway. “I don’t think that people realize how much that road is used...by absolutely every contraption...and they have to come out into the road” with caution due to poor site lines. She noted that the road is utilized a great deal by pedestrians, Greely’s cross country team, and increasing truck traffic. “My concern is safety and better maintenance of the road. Lowering the speed limit is my prime concern. They call it the truck road. It’s amazing the amount of shaking” my home endures from the trucks. The Manager clarified that the speed limit is posted 35 mph from Main Street “almost to Hillside.”

Chairman Porter asked, “What has changed” since the town’s last speed reduction request? The Manager explained MDOT considers driveway openings and the “character” of the road. “I’m not very confident they’re going to come back with anything different than they did last time. Nothing has changed as far as the geometrics of the road.” Councilor Turner felt the distance of the homes from the road “had a lot of logic to it based on that time. I think there is some argument that there definitely is more usage as far as pedestrian traffic on that stretch. There is a lot of non-vehicular use along there.” Nonetheless, Councilor Turner expressed uncertainty that “it’s really worth going through the motions of sending it to DOT.” Councilor Copp believes the heaviest traffic is likely to occur “from Main (Street) to the ball fields.” Councilor Perfetti believes “you can lower it as much as you want, but it is a straight” road “conductive” to higher traveling speeds. Councilor Moriarty suggested the distinction between a state and town road “really doesn’t move me one way or the other...not a lot has changed in two or three years. We ought to be fairly conservative on these requests. I have some concerns with trying this so soon after the last time.” Chairman Porter added the issue of speed limits has been a topic of repeated discussion during his time on the council and requested the Manager supply the council at its next meeting with the number of requests received for speed limit reductions.

The Manager responded that he would notify the Greely Road residents of the council’s public hearing, and added that there was mixed support when the town last considered this request.

Motion by Councilor Copp, seconded by Councilor Turner, to set an October 22nd public hearing date to consider and act on submitting a request to MDOT for a speed limit reduction on Greely Road from 45 to 35 mph.

VOTE: PASSAGE 5-1 (Councilor Copp opposed)

07 – 126 To hear a report from Route 100 Committee re: zoning use and map changes; design standards and related subdivision ordinance amendments, and to confirm the October 22nd Public Hearing date.

Councilor Moriarty provided an overview of the Route 100 Committee’s recommendations as a “prelim for the public hearing in two weeks.” This project “came full circle in an interesting way.” The LB Zone was enlarged in 2005 to accommodate the Castle Rock Business Park. “That action was the catalyst for

the formation of the Route 100 Committee.” The Planning Board approved both the committee recommendations and the Castle Rock Business Park September 18, 2007. The LB Zone consists of a 600’ wide strip running the length of the zone from the Gray to Falmouth borders. The committee recommends the establishment of five additional zones: the VCC (Village Commercial District); the VOC I and II (Village Office Commercial) Districts; the MUZ (Mixed Use) Zone; and the VMDR (Village Medium Density Residential) Zone.

The VCC zone consists of the existing HC zone “and then some,” and has increased in size from 57 acres to 142 acres of “commercially developable land.” The VCC Zone is the “most intensively commercialized zone” and permits a “fairly heavy concentration in a variety of commercial” and retail operations. Special exceptions include the currently permitted uses of auto repair and retail auto sales. The VOC I sits between the power line and the southern border of the VCC Zone. It is slightly less intensive than the VCC Zone, but is otherwise strongly weighted toward professional offices. A special exception for single-family residences was not included “and we may want to include it for the sake of consistency.” The VOC II zone sits between the power line and the Falmouth town line. It is slightly less intensive than the VOC I but in many respects resembles the VOC I. Special exceptions are included which address concerns raised regarding home business uses. The Mixed Use Zone MUZ allows several different uses, but does not allow drive-thru restaurants. Special exceptions in this zone include single family residences. The VMDR (Village Medium Density Residential) Zone allows residential development on smaller lots than the existing zoning. While there are some special exceptions, “This is primarily a residential area.” Existing uses and residences will not be “rendered illegal or somehow nonconforming.” An existing home can be sold and resold “an indefinite number of times without triggering any zoning violations.” A number of improvements are underway at the Route 100/Blackstrap Road intersection for “a general softening of the appearance.” A drawing of “what this area could conceivably look like ... if the zone is changed and the related design standards are adopted” depicted “a fairly attractive looking retail and commercial development. It clearly isn’t a strip mall.” Another depiction showed the Castle Rock Business Park as an “area appealing visually...set back off the road.” In closing, Councilor Moriarty explained a final public hearing will be held October 22, 2007 to adopt the new zones and design guidelines.

Councilor Copp noted that the J Bros gas station and convenience store will be located within the MUZ Zone and will not be permitted as a special exception in this zone. “It’s an existing business that’s been there for years.” Councilor Moriarty replied that this would be reviewed before the October 22nd meeting. The Manager stated that if the existing use were to become non-operational, the use would be grandfathered for one year from the date of the close of the business. Councilor Copp also noted that “automobile sales and repairs” become special exceptions in the new zones. “I just think it’s gonna create a lot of paperwork down the road. And I can’t see why it has to be a special exception; I think it should be a permitted use.” Councilor Perfetti sought clarification regarding expansion of existing uses. Councilor Moriarty explained that expansion of a grandfathered use would not require special exception permitting, but a new dealer or business would. Councilor Turner concurred, “As long as it was the same business, expansion is all right.” Councilor Copp asked specifically about Auto Land, which is currently closed. If it were to reopen as a convenience store and close for two years and reopen as an auto store, would it require approval by the Board of Appeals? It was felt board approval would be necessary due to the change in use and the two year closure. Councilor Moriarty explained the Route 100 Committee created special exceptions to “ensure that there would be a mix of commercial uses” and not a substantial portion of the zone devoted to one particular use. “So, it was seen as one layer of control or oversight that would not be all that hard to overcome.” Chairman Porter expressed his gratitude to the committee for its “time, effort and dedication. It’s a very positive thing.”

07 – 127 To hear a report and set a Public Hearing date (October 22nd) for consideration of junkyard/recycler permit renewal, Greenlaw Salvage located at 1 Longwood Rd.

The Manager informed the council he and Code Enforcement Officer Bill Longley met with Mr. Greenlaw last week. “We went through our concerns” and Mr. Greenlaw agreed to meet on site with the Code Enforcement Officer and a DEP representative for a “third party review. We’re waiting to see where that goes. We’re hopeful...we’ll be able to work with Mr. Greenlaw to come to some resolution.”

Motion by Councilor Perfetti, seconded by Councilor Moriarty, to receive the report of the Code Enforcement Officer and set an October 22nd public hearing date to consider and act on the junkyard/recycler permit renewal for Greenlaw Salvage, located at 1 Longwoods Road.

VOTE: UNANIMOUS PASSAGE 6-0

07 – 128 To set a Public Hearing date (October 22nd) for Cumberland Salvage junkyard/recycler permit renewal.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to set an October 22nd public hearing date to consider and act on the junkyard/recycler permit renewal for Cumberland Salvage.

VOTE: PASSAGE 5-0-1 (Councilor Copp abstaining)

07 – 129 To set a date (October 22nd) to hear quarterly report from Town Council Finance Committee.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a date of November 12th to hear quarterly report from the Town Council Finance Committee.

VOTE: UNANIMOUS PASSAGE 6-0

07 - 130 To hold a Public Hearing and authorize Town Manager to execute a Conservation Easement for Wetland Preservation at Twin Brook.

The Manager informed the council he has removed the hunting restriction from the easement language, as they requested at their last meeting. Chairman Porter questioned “If for some reason we need to connect...to that parcel that’s currently now on Greely Road...does this allow us access to that property?” The Manager replied, “It does allow us to build a trail. I believe we would be able to do that.” Referring to paragraph 1b, Councilor Perfetti asked, “Doesn’t that prevent us from building a path or trail through there? If there is no current path we can’t build a new path?” Councilor Stiles asked “Why are we being forced to put restrictions or covenants on” something we already own? The Manager replied that the wetland impacts from the development of the existing and Tuttle Road side required us to “re permit the whole site” in order to delineate the whole site. “This area is not very usable land...it’s in a real wet, wet area. This land would have very low value” for any type of passive recreation...” Paragraph 1e restricts “trucks, cars...bulldozers and backhoes or other motorized vehicles...” from the covenant area. No, the trails in this area “have been closed” because they’re in wetland areas. Councilor Moriarty questioned “the so called wilderness trail” and whether it is affected. It is not. Councilor Moriarty asked whether all of the existing trails in the covenant area are blocked or off limits. The “major trails...are fine,” replied the Manager. “This is a total barrier to motorized vehicles,” suggested Councilor Moriarty, referring to paragraph 1e.

Motion by Councilor Perfetti, seconded by Councilor Copp, to authorize the Town Manager to execute a Wetland Preservation Area Declaration of Covenants and Restrictions for Twin Brook.

The main motion was amended by Councilor Moriarty, seconded by Councilor Turner, to add the words “new or existing,” after the words “path or trail,” to paragraph 1b so that it reads in part “...and clearing will be allowed for the maintenance of any path or trail, new or existing...” This will retain the town’s right to open up a walking trail for non-motorized use “if we should ever want to.” Councilor Moriarty summarized by noting that paragraph 1e “preclude any trail for vehicles so by exclusion you’re left with simply a walking trail.”

VOTE ON AMENDMENT: UNANIMOUS PASSAGE 6-0
VOTE ON MAIN MOTION: UNANIMOUS PASSAGE 6-0

07 – 131 To authorize Town Manager to accept bid proposals for a maintenance building, shelter and athletic field improvements at Twin Brook.

The Manager recommended the council give direction to the town’s engineer to include as a bid alternate a brick and metal façade building. “Then you could pull it out or leave it in” at your choice as the bids come in.

Chairman Porter requested more details regarding the maintenance building. “Describe to me what the building is going to look like, where the building’s gonna be and what type of buffering. I thought there was a significant buffering plan being added to the existing buffering.” The Manager explained three sides of the building will not be visible unless you are near the handicapped access trail. “You can not see it from the road or any of the playing fields. The side you will see, you will see maybe a third of it.” The existing storage containers will be removed once the building is complete. Councilor Copp suggested the town “would get a better price” if the town accepted individual, rather than joint bids, on the maintenance building and shelter. “One’s a metal building, one’s a wooden building...I think you’d get a better price if you put it out individually.” In response to the concern regarding a metal building, Councilor Perfetti stated “You’re not gonna see it... and I can’t understand why we would add \$25,000 or \$30,000 to the cost” of the maintenance building. Councilor Stiles noted that he has seen murals on metal buildings that “would take the eye right off it and be a lot less expensive.”

Motion by Councilor Moriarty, seconded by Councilor Stiles, to authorize the Town Manager to request bid proposals for a maintenance building and shelter at Twin Brook.

VOTE: UNANIMOUS PASSAGE 6-0
(Note the additional motion made during New Business)

07 – 132 To hear a report from Town Manager and set a Public Hearing date (November 12th and/or 26th) re: changes to sewer ordinance (ready to serve fees and connection fees).

The town had approximately 40% of unused sewer capacity in the late 1990’s. Sewer Units were purchased for \$2,000 for speculative development. The units were sold without a “ready to serve” component and as the system was built-out and new maintenance demands and costs were incurred, the existing users rather than the unit holders, absorbed the burden of the new costs. The ordinance was amended in 2003 to require all permit holders to pay a ready to serve fee. By 2003, the system was barely paying for itself. Falmouth was forced by MDEP to upgrade its treatment plant at a cost of \$7 to 8 million dollars, with 30% of this cost the responsibility of Cumberland. This increased our annual costs by 66% in a two year period. As the system grew older, the town did not fund properly for maintenance properly. “I just don’t see how it can change unless we see a significant shift off the enterprise fund” and onto all of the taxpayers. More users could result in reducing that increase nearly in half. “Outside of that there are not a lot of answers to this problem.”

The Manager offered the following proposed short-term plan: 1) Enforce mandatory ready to serve fees; (2) offer an Amnesty Program for all current unconnected users. This could result in between \$30,000 and \$100,000 in additional revenues. He estimates 100 homes do not pay a ready to serve fee. (3) Check each sewer user account to ensure proper number of units is billed to each owner, including the town and schools. In summary, the Manager stated the town will aggressively enforce the ordinance related the ready to serve fees, but recommended the council adopt an amnesty or reduced fee program. This approach will curb the escalation of costs and sustain the present viability of our sewer infrastructure.

Chairman Porter complimented the Town Manager on his explanation. It helps us understand why we are where we are today. "It's very easy to understand now." A discussion regarding the amnesty program occurred. "In essence, this is money we already lost. In the macro sense I don't know of any other prudent way" stated the chairman. Councilor Turner believes we've got a "huge obligation to have viable economic systems in place. This is something that has been a problem for a long time. It seems to me the amnesty program does fit. Without it, I don't think...anything else works." Councilor Moriarty suggested the amnesty program would put in place one fee for all. Councilor Perfetti asked whether when a homeowner opts out of the amnesty program and then sells their home there is a way to prevent the next homeowner from paying the higher fee. The Manager responded that the town "could possibly flag those" but an amendment to the sewer ordinance would likely be needed. Councilor Copp stated id "it's huge to people that are on the sewer. In ten years your sewer bill will be higher than your tax bill. It really could escalate."

Motion by Councilor Perfetti to set a public hearing date of November 26th to consider and act on amendments to Articles III, IV, V & VIII of the sewer ordinance (read to serve fees and connection fees).

VOTE: UNANIMOUS PASSAGE 6-0

07 – 133 To authorize a permit to MDOT for overweight trucks for 2008 Route 100 culvert project.

The Manager explained the Route 100 Doughty Bridge will be under construction and shut down for one to two weeks, with traffic detoured to Blackstrap Road. A Construction Overlimit Permit allows the contractor (MDOT) to use overweight equipment and loads on municipal ways. The maximum speed limit for trucks will be 25 mph. The Manager has requested a \$40,000 per mile bond from MDOT. This will ensure placement of a three quarter inch overlay should the road be damaged.

Motion by Councilor Stiles, seconded by Councilor Turner, to authorize a 2008 Construction Overlimit Permit to MDOT for overweight equipment and loads for the construction of the Doughty Bridge project.

VOTE: UNANIMOUS PASSAGE 6-0

V. NEW BUSINESS

Councilor Copp – re: Harris Rd construction project – can the end of the road be opened up to everybody? It would save a lot of hassle and a lot of traffic.

Councilor Turner – School Consolidation Committee is trying to conform to the state's mandate; a variety of members concerned about how the process will serve their citizens; incentives have been earmarked for conforming to the state's schedule; Yarmouth does not have to consolidate – we have to – so the committee members from Yarmouth are less eager to move forward in a precipitous fashion; as a result we may end up with a two-tiered situation that encompasses Yarmouth and another which deals only with the SAD and Falmouth; it appears Falmouth and SAD 51 are matched pretty well. We're meeting every Wednesday night for the foreseeable future; public is welcome to attend. Pet peeve –

unleashed dogs going from one neighborhood to another. Asked why leaves are not picked up in Cumberland? We have a disposal site at our DPW garage which is open Tuesday and Saturday. We encourage composting and recycling. It's illegal to place leaves in your curbside trash.

Councilor Stiles – firefighter Mark Stewart received a unit citation from Portland and a Class A Merit Award in conjunction with a lifesaving activity; he received report re: recycle material going into trash side of the packers; 4H youth did well in their swine events at the Cumberland Fair.

Chairman Porter – Composting lecture at the library Wed night; briefing on the MDOT letter from the Manager re: working with Chebeague and Yarmouth re: construction documents for a turnaround at Cousins Island; we are notifying MDOT that “we’re handing the ball over to Chebeague Island;” no out of pocket costs in this budget; mentioned Employee Appreciation Day 10/12 and encouraged councilor to attend; this is the 3rd or 4th year a Cumberland fire officer has received a merit award.

Councilor Moriarty – mentioned the need to include the field improvements to the Twin Brook bid. Motion by Councilor Stiles, seconded by Councilor Moriarty to authorize the Town Manager to request bid proposals for athletic improvements at Twin Brooks.
VOTE: UNANIMOUS PASSAGE 6-0

Town Manager Shane – we had issues with revenue sharing calculation; both we and Chebeague will be in much better fiscal shape because of that; Cumberland Fairgrounds shared thanks with town for expedited victualers licensing process; 11/04 is Daylight Savings time this year.

VI. EXECUTIVE SESSION – Pursuant to 1 M.R.S.A., § 405 (6) (A) re: personnel matter.

Motion by Councilor Turner, seconded by Councilor Copp, to recess to Executive Session pursuant to 1 M.R.S.A. §405 (6)(a) regarding a personnel matter.

VOTE: UNANIMOUS PASSAGE 6-0
TIME: 9:23 p.m.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to return from Executive Session.

VOTE: UNANIMOUS PASSAGE 6-0
TIME: 10:25 p.m.

VII. ADJOURNMENT

Motion by Councilor Copp, seconded by Councilor Perfetti, to adjourn.

VOTE: UNANIMOUS PASSAGE 6-0
TIME: 10:27 p.m.

Respectfully submitted,

Nadeen Daniels, CMC
Town Clerk