

MINUTES
CUMBERLAND TOWN COUNCIL
Monday, July 23, 2007

6:00 p.m. WORKSHOP I – To discuss Sex Offender Ordinance

7:00 p.m. CALL TO ORDER

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

Excused: Councilor Stiles.

I. APPROVAL OF MINUTES

II. MINUTES

July 9, 2007

Motion by Councilor Storey-King, seconded by Councilor Copp, to approve the minutes with typographical amendments noted.

III. MANAGERS REPORT

- Bud Stratton recently passed; Manager shared a letter from the Chief stating Mr. Stratton served 20 years as a dedicated member of the West Cumberland station.
- Town received a Certificate Achievement for Excellence in Financial Reporting.
- State law amended re: bicycle regulation which may create a loophole for “peloton” activity. However, a municipality may make other provisions regarding the operating location of a bicycle on a roadway if the ordinance is approved by MDOT.
- Event held at the entrance to the Rines Forest yesterday morning. Eagle Scout candidate Sam Kearns built a new kiosk as part of his efforts to achieve Eagle Scout rank. The kiosk, built on skids, identifies the entrance to the site and contains a pitched roof covering a map of the forest, with a mailbox container and posting of basic information.

IV. PUBLIC DISCUSSION

Chairman Porter deferred to Susan Campbell, Cumberland member of the MSAD 51 Board of Directors, who explained the board is “actively pursuing” a partnership with Falmouth, and have extended a joint invitation to Yarmouth “to be part of our process.” A letter of intent must be submitted to the Department of Education by August 31st which will in effect “begin the planning process. Our hope is that we will be partnering with both Falmouth and with Yarmouth.” The planning team will include members of the community and respective districts. The state seeks a reorganization plan by December 31, 2007 and a plan validation referendum by January 15, 2008. “We have some latitude...we can delay...and do more municipal referendum in June” with implementation by July 2008 or 2009, depending “on the progress of the planning process. We are looking at the possibilities and the opportunities that consolidation provides for us in terms of efficiencies and cost effectiveness, but also in terms of the enrichment possibilities and opportunities it presents for our students. There are an awful lot of details to cover in a short period of time.” Chairman Porter encouraged Ms. Campbell to return with future updates. Councilor Moriarty applauded the SAD for “taking that step in the right direction” to include Yarmouth.

Nancy Heyner, Forest Lake, addressing the recent Forest Lake referendum spoke to recognize the willing assistance of several town employees. “Incredible assistance came from Mike Crosby, Tammy O’Donnell, Bill Longley and Pam Bosarge.” She also extended her thanks to the council members, Town Manager and Town Clerk. Chairman Porter thanked Ms. Heyner for offering “those kind words” toward the town employees.

V. LEGISLATION AND POLICY

07-097 To hold a public hearing to set FY '08 tax rate as recommended by the Tax Assessor.

Assessor William Healey recommended a tax rate of \$19.80 per thousand. A total taxable valuation of “just over \$800 million” which was “higher than we originally projected.” Due in part to lot splits, new construction, additions and a small increase in personal property, the tax rate is “considerably lower” than originally expected.

Mr. Frank DeWolfe asked why the TIF Financing Plan Amount, shown as line item number 9 on the 2007 Municipal Tax Rate Calculation form, changed from \$743,434 to \$659,341.98. He also asked why the overlay was increased significantly and asked what affects the overlay from one year to the next. Town Manager Shane responded that the commercial values in the TIF District “weren’t adjusted back when we put those projections out initially.” The new number represents “the non revaluation numbers. Next year, once there’s a revaluation, you’ll see a higher number. They’re based on the values we have on the books versus what the reval numbers would look like next year.” Overlay has a few purposes – (1) originally to allow selectmen/councilors to round numbers up; (2) to abate properties for tax abatement purposes that might not have been included in the budget; and (3) a contingency account for the town. Monies not used were applied to the next year to offset taxes for the upcoming year in three of the last four budgets. Because there is some uncertainty in a revaluation process, “the overlay will be as high as five percent. We may have ...several abatements or adjustments to the taxes that will whittle that down.” If not needed, the funds will likely be applied toward the next year’s tax rate to offset taxes. Money for the new senior citizen tax rebate program “will come out of that overlay.”

Motion by Councilor Turner; seconded by Councilor Moriarty, to set the municipal FY '08 tax rate at \$19.80.

VOTE: UNANIMOUS PASSAGE 6-0

07 – 098 To set rates at which interest will be paid for delinquent and over paid taxes, and to authorize applying tax payments to oldest unpaid taxes.

No public comment received.

Motion by Councilor Moriarty; seconded by Councilor Perfetti, to set the interest rate for delinquent taxes at twelve percent.

VOTE: UNANIMOUS PASSAGE 6-0

Motion by Councilor Perfetti; seconded by Councilor Copp, to set the interest for overpayment of taxes at six percent.

VOTE: UNANIMOUS PASSAGE 6-0

Motion by Councilor Copp; seconded by Councilor Perfetti, to apply all tax payments to the oldest unpaid taxes.

VOTE: UNANIMOUS PASSAGE 6-0

07 – 099 To act on permit request by the Greely Football Boosters club for a bonfire at Twin Brook Recreation Area on October 25, 2007.

The Town Manager introduced Bob King to represent the Football Boosters. This has been approved for a few years and “we have a good system in process right now.” The boosters club has paid a refundable deposit. Mr. King noted that the pallets will be delivered Sunday, October 21st as well as a flatbed trailer that will be used as a stage. This is held before the annual game with Falmouth.

Councilor Perfetti asked if there are signs posted during the four days. Given the presence of staff throughout the four days, the Manager did not feel there was a safety concern. Councilor Storey-King informed the council and public that while Mr. King is her husband, there is no fiscal gain or personal benefit with approval of this permit.

Motion by Councilor Copp; seconded by Councilor Turner to approve a permit to the Greely Boosters Football Club to conduct a bonfire at Twin Brook Recreational Area on October 25, 2007.

VOTE: UNANIMOUS PASSAGE 6-0

07 – 101 To hold public hearing re: no parking restrictions and tow away zones in Twin Brook Recreation Area.

The Town Manager indicated he was asked to post tow-away zone areas in the park “particularly for large events.” The Twin Brook Committee feels this is needed. Our town attorney has stated that Maine law recognizes the rights of municipalities to regular parking; i.e. a law enforcement officer may cause the removal to a suitable parking place of a vehicle interfering with the normal movement of traffic. This authority extends to a public event such as those occurring at Twin Brook. “It has to specifically say under police order. It’s a little less problematic” than signs posted every few hundred feet. “This way we can put ‘em up for the specific tournaments...probably a hand full a year.”

Councilor Moriarty agreed with the “lease complex route and endorse the chief’s existing authority per state law to temporarily post. That way we avoid the complexities of an ordinance.”

No public comment received. Councilor Turner agreed “creating ordinances where it isn’t necessary is a huge problem. It’s appropriate that we take this route.”

Motion by Councilor Moriarty; seconded by Councilor Storey-King to encourage the Cumberland Police chief to exercise his authority pursuant to state law to post the entrance to Twin Brooks against parking on an emergency basis.

VOTE: UNANIMOUS PASSAGE 6-0

07 – 103 To set public hearing date (August 13, 2007) to consider and act on a Mass Gathering Permit and Victualers Licenses for the Cumberland Fair, Cumberland Fairgrounds, September 23rd – 30th, 2007.

Motion by Councilor Moriarty; seconded by Councilor Copp, to set an August 13, 2007 public hearing date to consider and act on a Mass Gathering Permit and Victualers Licenses for the Cumberland Fair, September 23 – 30, 2007.

VOTE: UNANIMOUS PASSAGE 6-0

07 – 100 To hold public hearing to set FY '08 sewer rate and discuss Manager's proposal for transferring administration to Portland Water District.

The Manager explained the sewer system is funded “solely by the users” and the DEP has required major upgrades to the Falmouth plant costing approximately \$8 million dollars. Cumberland owns thirty percent of the Falmouth treatment plant and is responsible for those debt payments. A 7% increase is requested, effective August 1, 2007. The increase has averaged sixteen percent over the past three years. With the increase, the base fee will average \$55.16 per household, a \$3.58 month increase.

Councilor Turner stated “there was some prediction that we’d run into this difficulty eventually. We do need to do something to get more people on board on the system.” Councilor Copp inquired whether the system peaks at a certain number. The system can accommodate another 3-400 single-family equivalents. Councilor Moriarty inquired whether any of the potential users are paying the readiness-to-serve fee now. “Some of the newer ones are...but there is a great majority of folks that the sewer passes by that don’t pay anything. The sticking point is the connection permit” cost of \$2,250 replied the Town Manager. With the addition of a few thousand dollars for the cost of the sewer line, a homeowner could be faced with a cost of nearly \$5,000 to \$7,000.

Frank DeWolfe, Orchard Road, questioned whether the fees and expenses are a break-even proposition. “If you were on well and septic, nothing in the tax rate reflects that in your tax bill. It’s supposed to pay for all its costs. The debt service payment attributed to the upgrades is factored in the monthly fee,” responded the Town Manager.

Don Fisher, a Rockwood resident, feels system payers “deserve a background and explanation of how the system works.” Three issues of particular concern to him are whether the Portland Water District is an efficient, well-run organization; how assessments are allocated to the member towns; and whether the allocation is fair to the users in the Town of Cumberland.

The Town Manager responded with a two-part proposal: hold a meeting between the Town Council and Sewer Board of Appeals to glean “some technical insight” and history, and institute a sewer connection amnesty program. “We’re not getting any revenue from those folks that didn’t connect.” He proposed an eighteen to twenty-four month amnesty period during which the connection fee is waived; only the \$50 permit fee would be required. Additionally, the manager proposed that the connection fee be increased to \$3,500 at the expiration of the amnesty period. Currently, the connection fee varies between \$2,500 and \$9,200 depending on where the street is located, how many homes are on the street, and when the system was installed. “I don’t know who

could do that and then put in a system as well on top of that. If we can add more revenue by adding 200-400 more users to the system, it's almost a two-for-one. We have the ability to probably reduce the increases to next to nothing in the near future if we can add more users to the system, and I see that as a huge benefit" to the existing users and the town as a whole. The Manager also questioned why the town is "in the sewer business? I've had a preliminary discussion with the Water District to see if they would entertain that." If the Portland Water District received approval from the state legislature they would then "set the annual assessments for the town just like they do on the water bill."

Councilor Turner believes the original system model came about as a result of "a fixation on slowing growth down...and was part of what caused that system to be put in the way it was." Councilor Moriarty solicited information regarding the origination of the different connection fees. The manager explained that neighborhood requests for sewer line installations were granted, but a number less than the actual number of homes on the street was actually connected to the system. "We don't have full capacity on those line extensions that happened after the initial contract."

Richard Moore, Cumberland Foreside, questioned the "possibility" for the residents of Lantern Lane to connect to the sewer system. The Manager stated "most of the public roads" received a sewer line, including Route 88, but queried the public status of Lantern Lane, adding, "The line would have to be created that isn't there presently. That doesn't help the situation we're in right now; that just adds more cost to it unless that cost was paid for by those residents of Lantern Lane." Chairman Porter clarified that the system has capacity, but "this would be borne by the residents of that lane. The Chairman agreed to schedule a workshop, likely at the meeting of September 24, 2007.

Motion by Councilor Moriarty; seconded by Councilor Turner, to approve a 7% increase in the sewer user fees.

VOTE: UNANIMOUS PASSAGE 6-0

07 – 104 To set public hearing date to act upon recommendations from the Planning Board re: Route 100 zoning changes.

Councilor Moriarty indicated that Planning Board had not yet acted on the zoning recommendations of the Route 100 Committee.

Motion by Councilor Moriarty; seconded by Councilor Perfetti, to table this item.

VOTE: UNANIMOUS PASSAGE 6-0

**07 – 102 To hold public hearing re: establishment of third Route One TIF District:
a) approval of project list for Route One TIF;
b) approval of project list for Route 100 TIF;
c) set public hearing date for establishment of Route 100 TIF.**

Town Manager Shane described TIF District Three as the area that along the Falmouth border, "just beyond SeaFax" on Route One. "This one lot became 12 commercial lots" and requires a significant amount of blasting of ledge. Mr. David Chase, owner and developer of the site, has received a one-year site plan approval for the top lots, with a possibility for two six month extensions. The manager requested the council "put a circle around this entire parcel" and designate it as TIF District #3.

The present taxable value of this land is approximately \$766,000. Because the lots were subdivided after April 1, 2007, “they don’t come onto the books as anything but a gross piece of land until next April.” At that time, the taxable value “will go...to nearly \$3 million dollars in value.” The incremental value in year one alone is nearly \$2.4 million dollars and the manager estimated a TIF value of over \$10 million dollars if buildings were placed on the lots over the next ten years. The manager reviewed TIF expenses to date and provided a “probable cost” of \$16,471,100 for future TIF funded projects, estimated tax collections at \$18,645,982, for a net revenue of \$2,174,882. TIF Bonds issued to date include a \$2.6 million and \$1.015 million dollar bond for water line projects and Twin Brook improvements, respectively.

The manager broke down the taxable value as follows: town - \$752,709,950; TIF 1 - \$25,630,400; and TIF 2 - \$7,669,700. This represents \$659,342 in TIF fund revenues, identified on the FY '08 commitment form as “TIF Financing Plan.” The manager stated the mil rate would increase from \$19.80 to \$19.85 if the TIF revenues were not applied as reimbursement for costs incurred at Twin Brook and Economic Development. These applied revenues are “booked as revenues...in your present budget and would have to be compensated for if we didn’t have a TIF.”

The Manager recommended adoption of the Route One TIF District #3 in order to begin to market the properties. The developer and town have received preliminary interest in these lots. The Route One project list includes the sidewalk and center turning lane, and approval of the Route 100 project list includes the design of the waterline extension to Castle Rock; landscape enhancement and easement work along Route 100; and design of the turn lane into Castle Rock. Councilor Moriarty clarified that the request for the Route 100 project list includes the “design” and not construction of the waterline extension and turn lane.

Frank DeWolfe, Orchard Road, requested clarification regarding the TIF Financing Plan Amount. He believes that “Without that revenue...our mil rate actually goes down. If the value of that real estate in those TIF Districts was actually utilized for town services everybody’s taxes would be reduced.” The Manager responded that the TIF value can not be used for “anything other than economic development that’s approved by DECD. The value of those districts would stay the same; we just wouldn’t capture the taxes. All we are capturing now is the incremental value. If we had no TIF Districts today our mil rate would be .05 cents higher than it is today. Mr. DeWolfe also felt that “If the TIF District wasn’t created, the taxes from that new building would be used to help reduce our taxes because those monies would be applied to our town services. It’s still being earned through the taxes.” The Manager detailed that the state municipal valuation form requires a separate listing of appropriations and revenues. “If the TIF fund disappears, the \$300,000 is still in the budget...it gets refunded from either the revenue...or you have to add an appropriation to it. It’s very black and white.” In response to the “profitability of TIF District One and Two” Mr. DeWolfe questioned the need to create another TIF District “and keep that segregated” from the tax base? “I may never really see the benefits of the commercial districts as a taxpayer.” He invited the council to consider “setting more money...into the general fund” adding “You’re really capturing all the best properties in town. None of those improvements are gonna go to help fund taxpayer expenses.” The Manager countered that a Credit Enhancement Agreement helps the town attract desirable businesses, but “It’s not automatic that someone gets a credit enhancement agreement just because a TIF District is in place. We have twelve to fifteen years of projects that are needed before that money will be funneled into the tax rate.”

Ed Kerstein, Mackworth Lane, asked if the waterlines have any relationship to the sewer lines “in terms of does it use capacity on it?” The TIF bonds paid for the upgrades to the pumping station on Route One and will pay for \$650,000 in future improvement costs to the upgrade of line capacity. There are no increased costs to the homeowners because of these water lines.

Bob Simonds, Bruce Hill Road, questioned if a “ledger” exists which itemizes the \$659,342 expenditures. The manager clarified that the approvals requested this evening are a part of the FY ‘08 funds. However, monies from the two TIF districts may be “filtered back and forth” between the two districts. “That’s the type of flexibility we’ve been” given by DECD.

Councilor Moriarty questioned the number of districts state wide. Bond Attorney Ron Epstein believes there are approximately a few hundred, and they are utilized predominantly in the southern part of the state. The evolution moves from the original and somewhat exclusive use for municipal infrastructure, to incentives for businesses to locate, to the present inclusion of projects “the municipality might do anyway to facilitate economic development.” Approximately 45% of Cumberland’s taxes are lost to “getting less benefit under the education, county tax and revenue sharing.” The state “pretends” that that new value doesn’t exist. “That’s one of the ways that you can benefit for infrastructure projects even without doing credit enhancement agreements.” Councilor Story-King asked if the TIF agreements are at risk of change by the legislature. “To date a substantial component of that formula has always been property tax valuation, and they’ve always consistently said TIF valuation is excluded from consideration in that.”

Motion by Councilor Storey-King; seconded by Councilor Copp, to designate TIF District #3 the Cumberland Foreside Village Municipal Development and Tax Increment Financing District and adopt the development program for the district; such designation and adoption to be on terms and provisions of the TIF District #3, the Cumberland Foreside Village Municipal Development and Tax Increment Financing District Development Program, as presented at this town council meeting and has been on file in the Town Clerk’s Office, a copy of which is incorporated herein by reference, and also makes the findings set forth in the development program, adopts the financial plan including the percentage of increased assessed value of said district to be retained as captured assessed value in accordance with the development program and authorizes the town manager to submit to the state of Maine Commissioner of Economic & Community Development for approval such applications and further documentations as may be necessary or appropriate for final approval in establishment of TIF District #3, the Cumberland Foreside Village Municipal Development and Tax Increment Financing District and its development program and financial plan pursuant to 30-A M.R.S.A., Chapter 206.

VOTE: UNANIMOUS PASSAGE 6-0

Motion by Councilor Perfetti; seconded by Councilor Moriarty, to authorize the Route One project list consisting of a sidewalk and center turning lane as presented by the Town Manager.

VOTE: UNANIMOUS PASSAGE 6-0

Motion by Councilor Moriarty; seconded by Councilor Perfetti, to approve the Route 100 Project List, which consists of design of water line extension to the Castle Rock Business Park, landscape enhancements and easements, and design of a turn lane into Castle Rock.

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

VI. NEW BUSINESS

Councilor Copp – passing of Bud Stratton, a longtime resident who ran hardware store for over 50 years; truly a gentleman who ran a good business - can only hope somebody moves into town with a new hardware store; he’s going to be missed by a lot of us.

Councilor Storey-King - another plead to bicyclist groups to be mindful of automobiles; congratulated the fire department on another great year; ‘huge congratulations’ to Becky O’Brien for her wins at the World Youth Track and Field championships –placed eighth in the world in the discus and fourth in the world for shot-put.

Councilor Turner – seconded comments re: bikers - “a real potential accident waiting to happen.”

Chairman Porter – Cumberland Farmers Market produce – support our local farmers; letter from Nancy & Nate Wiles re: opposition to sexual predator ordinance; note and article from Sally Stockwell re: Cool Cities Initiative; letter from Mr. Dill re: floating ramp/dock.

Town Manager – a float/ramp broke loose from its mooring and was reported to be floating in harbor for more than a week; Falmouth Harbormaster ultimately confiscated the float. Future communication process will be improved to more quickly address an issue of this sort.

Motion by Councilor Copp; seconded by Councilor Perfetti to recess to Workshop.

VOTE: UNANIMOUS PASSAGE 6-0

TIME: 9:25 p.m.

VII. WORKSHOP II – Transfer Development Rights discussion

VIII. ADJOURNMENT

Motion by Councilor Moriarty; seconded by Councilor Copp, to adjourn.

VOTE: UNANIMOUS PASSAGE 6-0

TIME: 10:18 p.m.

Respectfully submitted,

Nadeen Daniels, CMC
Town Clerk