

MINUTES
Cumberland Town Council Meeting
Town Council Chambers
MONDAY, July 26, 2010

7:00 p.m. Call to Order

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

I. APPROVAL OF MINUTES

July 12, 2010

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

VOTE: 6-0-1 Abstention (Councilor Porter)

II. MANAGER'S REPORT

There was a lot of flooding and washout areas during last week's storm. The Fire, Police and Public Services departments were all in place, ready to go, and handled the calls and situations very well.

Project Update:

▪ **Route 88**

There was a lot of washout last week due to so much rain in a short period. It has been fixed and is holding up well.

The construction crew will begin working on Sea Cove Road next week, beginning at the outfall and moving up toward Route 88.

There have been complaints of low hanging tree limbs on Range Road and on Route 88. When a tree limb is less than 14' in height above the pavement surface, the Town is liable to ensure that vehicles can clear the low hanging tree limbs. That is why the branches in those areas have been cleared.

▪ **Range Road**

The first layer of pavement is almost to the intersection of Bruce Hall Road. There is still some additional waterline work to be done at that intersection, which is scheduled to occur over the next few days. Please try to avoid that area if possible and find an alternate route. Curbing and driveway aprons were completed today.

Councilor Stiles suggested that road closed signs be placed at the intersection.

▪ **West Cumberland Playground**

The Recreation Advisory Committee met with West Cumberland residents to discuss the dangerous playground equipment at the West Cumberland athletic field. A subcommittee will meet in September to strategize a plan for types of new equipment, placement of the new equipment and fundraising.

Last week, our Town Clerk, Nadeen Daniels, submitted her resignation as Town Clerk and Human Resources Director. Nadeen has worked for the Town for 8 years and had informed the Town Manager then that she only wanted to work for 5 more years. We were fortunate to have had her for 3 years longer than we thought we would. We have had plenty of time to develop a transition plan and are being left in excellent shape due to the planning and training of staff. Tammy O'Donnell's official appointment at Town Clerk will be brought before the Council on August 9th, to be effective on August 19th, Nadeen's last day with the Town. Nadeen has worked in the

Municipal Sector for over 30 years. He and many others in our community will miss her compassion and commitment to detail and her incredible work ethic. She has worked with many people in the community and has made it a better place for her service here. It will be an emotional day on August 19th, Nadeen is a great person and a great friend who will be greatly missed.

III. PUBLIC DISCUSSION

None

IV. LEGISLATION AND POLICY

10 – 099 To hold a Public Hearing to consider and act on adding Section 402.6 (Deer Feeding and Baiting) to the Cumberland Zoning Ordinance, as recommended by the Planning Board. ***ITEM TABLED FROM 6/28/10***

Motion by Councilor Copp to remove this item from the table, seconded by Councilor Turner.
VOTE: 6-0 UNANIMOUS PASSAGE

Linda Emery of Crystal Lane reiterated a couple of points that are important to her. There were 970 cases of Lyme disease last year in Maine. This year, the cases have tripled. Other infections transmitted by Lyme ticks include a disease similar to malaria; the other two are parasitic infections that kill white blood cells. These infections can go undiagnosed for years, even if the person is being treated for Lyme disease. The CDC recommends discouraging deer from coming onto private property. One deer can carry 100 ticks, and one tick can lay up to 3,000 eggs, potentially delivering 300,000 ticks to your yard. No good comes from feeding deer as it disturbs the natural activity of the herd, and their digestion for the winter is altered naturally so they are not supposed to be supplemented. Mrs. Emery said that she understands that enforcement of this ordinance is questioned, but feels that there are other laws on the books that are not necessarily enforceable, but are in place if we need them. She thanked the Council for listening.

Councilor Turner said that he has thought a lot about this issue over the past two weeks, and now has some reservations. The fact is we are creating an unenforceable law. When we create a law that is unenforceable, we teach people to disrespect the law. A strong educational component to this matter is a must, but to create an ordinance that we acknowledge is unenforceable, takes local government in a direction of tying peoples hands where they ought to be left to their own devices. The pro to this issue is that it might be a deterrent, but the reality is that it is not enforceable. As much as he sympathizes with those who suffer from Lyme disease, he feels that it has no correlation to feeding deer. Perhaps baiting should be allowed in order to decrease some of the deer population.

Councilor Moriarty said that this ordinance might be difficult, but not impossible to enforce. Such is the case with many pieces of legislation on the books, at both the local and state level. This is more an exercise in education and deterrence. The recently passed ordinance on chickens also has some components that are not enforceable. The data that we have is dramatic. In 2008, there were 780 confirmed cases in Maine (in that year, that figure had quadrupled over the previous 5 years). In 2009, there were 970 cases (190 more than the previous year). Cumberland and York Counties combined, tallied up to almost 56% of all cases reported statewide. According to the Maine Center of Disease Control, as of the end of June of this year, there have been approximately 275 reported cases of Lyme disease. This is almost twice as many as the mean average of the reported cases over the previous 5 years. Councilor Moriarty said that while the data may not be overwhelming, it is clear that if we can do something to reduce the spread of the disease by discouraging people from feeding deer and

encouraging deer to come into areas that they would not normally come, that is a positive thing. For that reason, he will support the motion.

Councilor Stiles there is an abundance of deer in the state. He has deer tracks on his property nearly every day and he does not feed or approve of the feeding of deer. Feeding deer does not increase the deer population, only Mother Nature can do that. Actually, feeding deer can decrease the population, since improper feeding could be detrimental to the deer herd. Deer destroy orchards and foundation plants. "Deer ticks" are found on many other animals. Literature indicates that the best way to decrease tick exposure is by keeping lawns mowed, edges trimmed, removal of brush and leaves around houses, and the use of professionally applied insecticide to control the nymph stage of ticks. The Animal Control Officer has indicated that this ordinance would be difficult to enforce at best. It would be difficult to prove if someone was feeding birds or deer. Councilor Stiles said that while he does not support the feeding of any wild animal, to support this ordinance would mean taking away our personal freedom. He would support an educational campaign warning of the dangers of feeding any wild animal.

Councilor Perfetti thanked Mrs. Emery for her patience. This process has been tedious and she has not taken any of it personally. He said that it is common to enact laws that are not enforceable. Banning deer feeding will not prevent new cases of Lyme disease. State Biologists discourage deer feeding to protect the health of the herd, not because of Lyme disease. A public education campaign would be the best thing to come out of this issue. He will not vote for this item because it will not prevent Lyme disease, and because all the statistics to measure new cases of Lyme disease are at the state and the county level. Even if we could prevent Lyme disease, we cannot measure it in Cumberland.

Councilor Porter said that it is absolutely not true that this ordinance is not enforceable. If someone is feeding deer and it is witnessed by a neighbor and the police are called, it can be dealt with. Hunting needs to occur in this community. That is one way to decrease the deer population. Lyme disease is very detrimental. Even if it is the wrong decision to pass this item, and if the Council has overreacted, have we hurt anyone in the process? Absolutely not. Even if there is marginal benefit, we have helped somebody. Councilor Porter referred to a letter from Scott Lindsay of the State Department of Wildlife supporting the ordinance.

Councilor Perfetti pointed out that he felt the Mr. Lindsay's letter was simply stating that the ordinance was a good one, but didn't offer a professional opinion that it would help to prevent Lyme disease, he simply supported the ban on deer feeding.

Councilor Copp thanked the Emery's for bringing this issue forward and for all their hard work. His concern is that this will cause feuds between neighbors. It can be enforced, but the Animal Control and Code Enforcement Officers will likely be swamped dealing with this issue alone. Through education, people will learn that feeding deer is hurting, not helping the deer population.

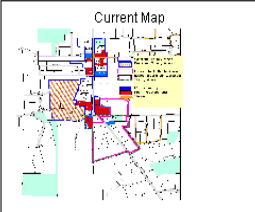
Chairman Storey-King said that she would follow up with the Town Manager regarding public outreach efforts to include signage, links on the town website, and other brainstorming ideas. She thanked Mrs. Emery for the great job that she did.

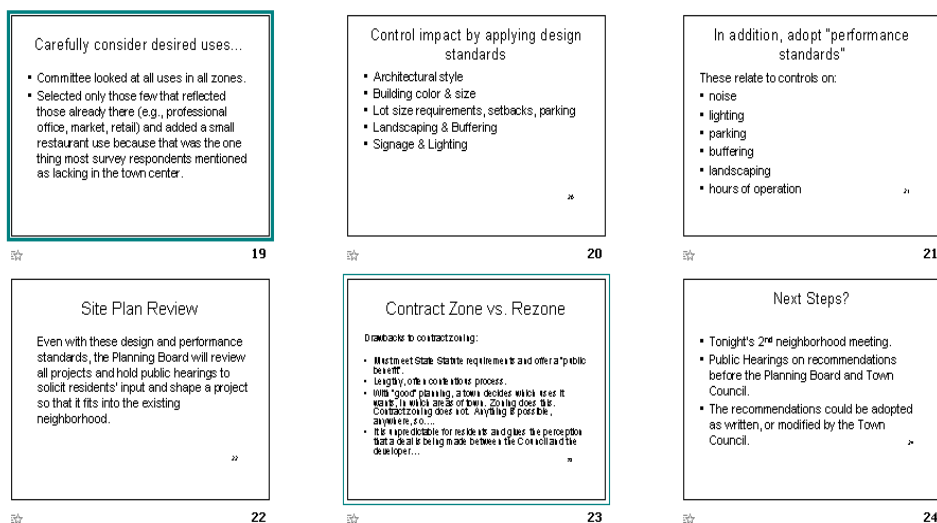
Motion by Councilor Porter, seconded by Councilor Moriarty to add Section 402.6 (Deer Feeding and Baiting) to the Cumberland Zoning Ordinance, as recommended by the Planning Board.

VOTE: 3 – 4 (Councilors Stiles, Perfetti, Copp and Turner opposed) MOTION FAILED

10 – 100 To hear a report from the Town Center Advisory Committee and forward same to the Planning Board for recommendation.

Town Manager Shane introduced Jim Orser, the Chair of the Town Center Advisory Committee who introduced and thanked the committee members who were present. He thanked the committee Council Liaisons, Councilors Moriarty, Perfetti and Porter. He also thanked Carla Nixon and Pam Bosarge for their hard work. Mr. Foley's presentation is below:

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| <p>Town Center Advisory Committee Presentation</p> <p>June 10, 2010</p> | <p>HANDOUTS</p> <ul style="list-style-type: none">• FAQ's• District Standards• Design Standards• Map | <p>What is the Town Center Advisory Committee?</p> <ul style="list-style-type: none">• 10 members, appointed Council• 3 Council Liaisons• Began meeting in September, 2009• Met 2x/month for over 8 months• Council charge asked for a report by 4/1/10...taking the time needed. |
| <p>Council Charge</p> <p>The duties of the TCAC "include but shall not necessarily be limited to" the following:</p> <ol style="list-style-type: none">1. Determine and assess the desires of Cumberland residents relative to the geographical area described above;2. Review the history of zoning in the area described above;3. Review the current zoning for the area described above; | <ol style="list-style-type: none">4. Review contract zone provisions of the current zoning ordinance;5. Review and consider current and future best practice of land use and land use planning in town centers;6. Make recommendation to the Cumberland Town Council regarding zoning changes, if any, in the area described above. | <p>Why did the Town Council decide to appoint a committee to look at this area of town?</p> <ul style="list-style-type: none">• Request by residents to take a comprehensive look at this area of town as had been done for Route 100 and the Doane Property.• 2009 Comprehensive Plan calls for a committee to develop recommendations on the future of Main Street.• Comprehensive plan survey showed there was support for allowing more diverse uses on Main Street. |
| <p>First, a look at the Comp Plan's Goals & Recommended Actions</p> <ul style="list-style-type: none">• Goal: Develop a plan for Main Street that reflects the vision of all town residents for this area's future potential as a center of the community.• Action: Implement the recommendations of the Main Street Committee and add those recommendations to this comprehensive plan. | <ul style="list-style-type: none">• Goal: Facilitate the development of a diverse economic base that includes the provision of routine goods and services at the local level.• Action: Consider rezoning of Main Street to allow for mixed uses such as professional offices, markets, small restaurant, or hardware store, in an effort to reduce the need for vehicle use, encourage walking, and creating a place for local jobs. | <ul style="list-style-type: none">• Goal: Encourage higher density development to areas which are served by public water and sewer.• Goal: Work towards creating a more "livable" community.... |
| <ul style="list-style-type: none">• Action: Strive to create a mix of homes, jobs, services and amenities in areas with proximity to town services.• Action: Encourage/allow for a variety of housing types to meet the needs of single residents, young families and seniors so that the ability to stay in the community for a lifetime is possible for all income levels.• Action: Establish design guidelines and performance standards for the Main Street area that will ensure compatibility w/ existing residences. | <ul style="list-style-type: none">• Goal: Create, protect, and enhance "Social Places" where residents can gather together.• Action: Relax zoning on Main Street to allow for a small restaurant or coffee shop. | <p>Comp Plan – Land Use Summary</p> <ul style="list-style-type: none">• Future Land Use section of the plan— discussion of "growth" and "rural" areas.• The MDR district was designated as a growth area, and more specifically, the statement "Many residents expressed the view that Main Street is the town center and that there should be a mix of low-intensity uses allowed." |
| <p>Comp Plan Survey</p> <ul style="list-style-type: none">• See Handout.• Responses broken down by use and specific areas of town. | <p>Study Area</p> <ul style="list-style-type: none">• Initially: (Council Charge) "from the Moss Side Cemetery to the intersection of Tytle and Orchard Road, thence due north on Orchard Road to the road from the area of Sweetser's Apple Cider and the former Losi Cakes including east to the Cumberland Center Fire Station."• THEN, added down Main Street• Delineated as a following neighborhood map.• Final area decided from Tytle to Moss Side Cemetery | <p>Current Map</p>  |
| <p>Process</p> <ul style="list-style-type: none">• Began with a site walk: Library to Farwell.• Committee reviewed historic uses and current uses.• Then reviewed the variety of uses allowed in all the zoning districts in town.• Considered if additional uses were desirable & appropriate.• Understood that change is inevitable; better to plan for it than react to it. | <p>History of Businesses on Main Street</p> <ul style="list-style-type: none">• Prior to zoning (1949): Tavern, wagon/carriage repair, general store, brickyard/mill, boat building, blacksmith, greenhouses, slaughterhouse, orchards, turkey farm, service station.• Post Zoning: Continued agriculture, market/take out and service station, TV/repair shop, pharmacy, doctor/dentist/lawyer offices. | <p>Committee Consensus....</p> <ul style="list-style-type: none">• Expand the types of uses to create a more live-able town center but without changing the character of the area. <p>How to do this?</p> |



Councilor Moriarty explained that since this is an amendment to the current zoning ordinance, the Council is required to send it to the Planning Board to hold a public hearing and make a recommendation to the Town Council, which will hold another public hearing before acting on it.

Motion by Councilor Porter, seconded by Councilor Copp, to forward the Town Center Advisory Committee Final Report to the Planning Board to hold a Public Hearing and submit a recommendation to the Town Council.

VOTE: 7 – 0 UNANIMOUS PASSAGE

10 – 101 To hold a Public Hearing to consider and act on increasing sewer user fees.

Motion by Councilor Porter, seconded by Councilor Perfetti, to increase sewer user fees 3% for the period of August 1, 2010 – July 31, 2011, as recommended by the Town Manager.

VOTE: 7 – 0 UNANIMOUS PASSAGE

10 – 102 To set a Public Hearing date (August 9th) to consider and act on setting the FY’11 tax rate as recommended by the Tax Assessor.

Town Manager Shane said that Tax Assessor, William Healey will be present at the August 9th meeting to recommend setting the tax rate at \$15.30 per 1,000. This is the same number presented during the April budget hearings.

Motion by Councilor Stiles, seconded by Councilor Moriarty to set a Public Hearing date of August 9th to consider and act on setting the FY’11 tax rate as recommended by the Tax Assessor.

VOTE: 7 – 0 UNANIMOUS PASSAGE

- 10 – 103** To set a Public Hearing date (August 9th) 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.

Motion by Councilor Stiles, seconded by Councilor Turner, to set a Public Hearing date of August 9th 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.

VOTE: 7 – 0 UNANIMOUS PASSAGE

- 10 – 104** To set a Public Hearing date (August 9th) to consider and act on a Mass Gathering Permit and Victualer's Licenses for the 139th Cumberland Fair to be held from September 26 – October 2, 2010 at the Cumberland Fairgrounds.

Motion by Councilor Stiles, seconded by Councilor Moriarty, to set a Public Hearing date of August 9th to consider and act on a Mass Gathering Permit and Victualer's Licenses for the 139th Cumberland Fair to be held from September 26 – October 2, 2010 at the Cumberland Fairgrounds.

VOTE: 7 – 0 UNANIMOUS PASSAGE

- 10 – 105** To set a Public Hearing date (August 9th) to consider and act on a Mass Gathering Permit and Victualer's Licenses for Nassau Broadcasting for Maine's Ultimate Fall Yard Sale to be held at the Cumberland Fairgrounds on Saturday, October 9, 2010 from 9:00 a.m. to 2:00 p.m.

Motion by Councilor Copp, seconded by Councilor Stiles, to set a Public Hearing date of August 9th to consider and act on a Mass Gathering Permit and Victualer's Licenses for Nassau Broadcasting for Maine's Ultimate Fall Yard Sale to be held at the Cumberland Fairgrounds on Saturday, October 9, 2010 from 9:00 a.m. to 2:00 p.m.

VOTE: 7 – 0 UNANIMOUS PASSAGE

- 10 – 106** To set a Public Hearing date (August 9th) to consider and act on setting October 18th – 22nd as Bulky Waste Pick-Up Week.

Motion by Councilor Turner, seconded by Councilor Stiles, to set a Public Hearing date of August 9th to consider and act on setting October 18th – 22nd as Bulky Waste Pick-Up Week.

VOTE: 7 – 0 UNANIMOUS PASSAGE

- 10 – 107** To set a Public Hearing date (August 9th) to appoint Tamara O'Donnell as Town Clerk.

Motion by Councilor Copp, seconded by Councilor Perfetti, to set a Public Hearing date of August 9th to appoint Tamara O'Donnell as Town Clerk.

VOTE: 7 – 0 UNANIMOUS PASSAGE

10 – 108 To authorize the Town Manager to sign a Police Department Mutual Aid Agreement within District II.

Town Manager Shane explained that this done every 5 – 7 years. The signing of this agreement allows the municipalities listed to assist each other with police matters and combined training. The Town Attorney has reviewed the agreement and has recommended endorsing it.

Councilor Porter said that he noticed that the Sherriff's Department is not listed on the document.

Town Manager Shane said that they likely fall under the County Charter. They do assist us and we assist them when needed for serious matters. This agreement includes only police departments in our district, not the Sheriff's Department or the State Police.

Motion by Councilor Copp, seconded by Councilor Perfetti, to authorize the Town Manager to sign a Police Department Mutual Aid Agreement within District II, in accordance with the attached document.

VOTE: 6 – 1 (Councilor Porter opposed) MOTION PASSED

V. NEW BUSINESS

Councilor Turner – asked the Town Manager if the leash law requires a dog to be leashed at all times. Town Manager Shane responded that State Law says that a dog must be under voice command at all times. A community can adopt a local ordinance requiring leashing, but there is no local ordinance that is more strict than State Law.

Councilor Turner said that in most instances, voice command is not effective.

Councilor Copp – He and his wife went to the Sparrows Nest for dinner recently. Excellent food at an excellent value.

In the Council Packets is a letter from the Maine Department of Marine Resources, stating that they will be conducting a shoreline survey in Cumberland over the next month. Is this due to the clam-flats being closed?

Town Manager Shane responded that DMR will be working with the Police Department to primarily concentrate on the non-sewer areas and doing visual inspections of the coastline (500 feet back). Our last round of water tests were more positive, but the troubling issue with the water testing seems to be with the culvert that comes across Powell Road that runs back to Greely Road. This historically has been the problem area with pollution. We now have two additional testing points, which isolates a portion of the shoreline, therefore allowing a portion to (hopefully) be opened in the near future for digging.

Councilor Porter – he feels that there are a lot of people in the community that don't think very highly of public servants at the national, state or local level. In his 20+ years of working in the public sector, he has worked with amazing people at the local level, state level, federal level, and world leaders, and he has yet to meet a public servant who is as dedicated and hard working as Nadeen Daniels. She is somebody whom we will not be able to replace. To make up for her loss in this community will be a huge effort because she brought so much. She will be missed by many.

Councilor Perfetti - None

Chairman Storey-King – On Wednesday at 7:00 p.m. at the Prince Memorial Library, James Nelson, a local maritime author will be talking about his latest book “George Washington’s Great Gamble”.

Councilor Stiles – A.H. Grover is doing a fantastic job on Range Road. It is a pleasure to watch them work. They are dedicated to their work and do a great job. Since the intersection at Bruce Hill Road will be closed, please let anyone you know who travels that road know about the closure so they can take an alternate route.

Councilor Moriarty - None

VI. EXECUTIVE SESSION pursuant to 1 M.R.S.A., § 405 (6)(C) re: real property acquisition.

Chairman Storey-King said that the Executive Session has been cancelled this evening.

VII. ADJOURNMENT

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

VOTE: 7 – 0 UNANIMOUS PASSAGE

TIME: 8:32 p.m.

Respectfully submitted by,

Brenda Moore
Executive Assistant