

# MINUTES

Cumberland Town Council Meeting

Town Council Chambers

**MONDAY, September 14, 2020**

**5:45 P.M. Farewell gathering for Bill Stiles**

## 7:00 P.M. Call to Order

Present: Councilors Copp, Edes, Foster, Gruber, Storey-King, Turner and Vail

### I. APPROVAL OF MINUTES

Motion by Councilor Edes, seconded by Councilor Copp, to accept the August 24, 2020 meeting minutes as presented.

VOTE: 7-0 UNANIMOUS

### II. MANAGER'S REPORT

Town Manager Shane introduced local author Bill Kinney who spoke about his new book "A History of Maine Railroads".

### III. PUBLIC DISCUSSION

Chris Neagle of Orchard Road thanked Cumberland Fire Department Paramedics Chris Copp and Lida Green for responding to his aid and saving his life recently.

Mr. Neagle voiced his concern about an article in a Maine State Bar Association periodical by Attorney Krystal Williams, who is self-described as a "Christian female attorney from away" and the challenges that presents. He read from the article, which he found troubling: *When I am stopped by a Cumberland police officer because – allegedly – the small light that illuminates my license plate is out on one side – it's personal. And when that same officer sees my ACLU and Maine Law tote bags in my back seat and "let's" me go only to follow me until I reach my house – it's personal. When I am stopped on my way to the gym by a Cumberland police officer who approaches my car yelling, "Do you have a gun?!" – it's personal.* Mr. Neagle said that he does not know this woman and pointed out that she is a black woman. This is a big problem for our Town and we now have a statewide reputation for having at least one racist police officer. He realizes that there is another side to the story and he would like to know the other side of the story.

Town Manager Shane responded that the day after the article came out, the Town Council was notified and an investigation began. As with any investigation, when the final adjudication is released it becomes public information. The Council cannot comment on an ongoing investigation.

Mr. Neagle said that he feels protected by the Cumberland Police Department and he hopes that this issue will be dealt with publically and openly.

Mari Balow, of Portland, requested the Council's permission to hold a 50K trail race that will go through Rines Forest and Knight's Pond this Saturday. The organizers of the race were under the impression that since they had received approval from the Chebeague and Cumberland Land Trust, that they were all set. They were recently advised by the Town Manager that they need permission from the Cumberland/North Yarmouth Joint Standing Committee for the use of Knight's Pond Preserve. This event is capped at 60 runners and they have gotten permission from the 2 private landowners who may be impacted because the

trails cross their property. Both Cumberland and North Yarmouth will be added to their insurance rider for this event.

Town Manager Shane said that a meeting of the Joint Standing Committee could be pulled together this week to listen to the event proposal and consider giving permission to allow it to take place at Knight's Pond.

#### **IV. LEGISLATION AND POLICY**

##### **20 – 065 To set a Public Hearing date of September 28<sup>th</sup> on the order of discontinuance as a Town way, a portion of Turkey Lane from Range Road to the snowmobile bridge.**

Town Attorney, Alyssa Tibbetts explained that Turkey Lane is what is known under Maine Law as a Town Way. The Town does not own the fee in the land, meaning that the Town does not own the title to the underlying property where Turkey Lane exists. The Town has an interest in that land for the use of the property for a passage as a Town Way. This currently includes, to the extent possible, vehicular access, motorized access, pedestrian access, etc. The options over time are twofold, with respect to a Town Way that goes unused, whether it is not maintained, not built to a particular standard or not passable by vehicles. One is to let the Town Way stand as it is today, make no affirmative designation with respect to the Town's position regarding the status of that Town Way, and wait and see if a property owner comes forward, requesting that it be built to Town standard for purposes of development, or to take the position that at that time the road has effectively been abandoned due to lack of use over a period of 30 years. The second option is to make a decision at any point in time (which is before the Council now) to discontinue the road. What happens at that point is the Town no longer has a Town Way used for highway purposes (vehicular access), but a public easement can be retained and the Council can determine the types of uses allowed over the public easement. With a Town Way where the Town does not own the underlying fee, the ownership of the land does not change. It is ultimately about the use of the land for both the abutters to that property and the public as a result of the Town's decision. If the Council decides that it would like to pursue the discontinuance process, there are a number of decisions that have to be made at the outset of the process to be sure that we are satisfying the State statute.

Councilor Turner said that the discussion by the Council on this has been that we do not want to give up anything as far as the Town is concerned based on a 66-foot wide right-of-way. Only about 20 feet is useable because of the terrain.

Councilor Copp said that he is concerned that if we reduce the 66-foot right-of-way and somebody wants to drive down to the bridge, they could potentially be driving over somebody's property. This is the situation with the right-of-way to Blueberry Hill.

Councilor Vail said that he does not want to prohibit vehicular traffic because some people have ambulatory problems and cannot walk down to the pond to fish. He does not want to constrain the people of the Town and he is comfortable with the discontinuance.

Motion by Councilor Vail, seconded by Councilor Copp, to set a Public Hearing date of September 28<sup>th</sup> on the order of discontinuance as a Town way, a 66-foot public easement of Turkey Lane from Range Road to the snowmobile bridge.

The Town Attorney advised the Council that the process for discontinuance is that the Council holds a discussion about the terms of the discontinuance, which generally will give direction for the attorney to draft the Order of Discontinuance. The direction that she needs this evening is not only the location and the width, but also whether there are any restrictions as well as any damages to be considered to the abutters.

Motion amended by Councilor Foster, seconded by Councilor Copp, to set a Public Hearing date of September 28<sup>th</sup> on the order of discontinuance as a Town way, a portion of Turkey Lane from Range Road to the snowmobile bridge with a 66-foot public easement, with no restrictions on the uses, and no damages ordered to abutters.

VOTE: 7-0

UNANIMOUS

**20 – 066 To hold a Public Hearing to consider and act on the 2021 Shellfish License allocations, as recommended by the Shellfish Conservation Commission.**

Town Manager Shane explained that the Shellfish Conservation Commission met last week and are recommending that the annual shellfish license allocations be the same as last year (unlimited resident recreational, 25 non-resident recreational, 8 monthly resident, 2 monthly non-resident, 1 resident commercial and 1 non-resident commercial).

Chairman Gruber opened the Public Hearing.

Public discussion: none

Chairman Gruber closed the Public Hearing.

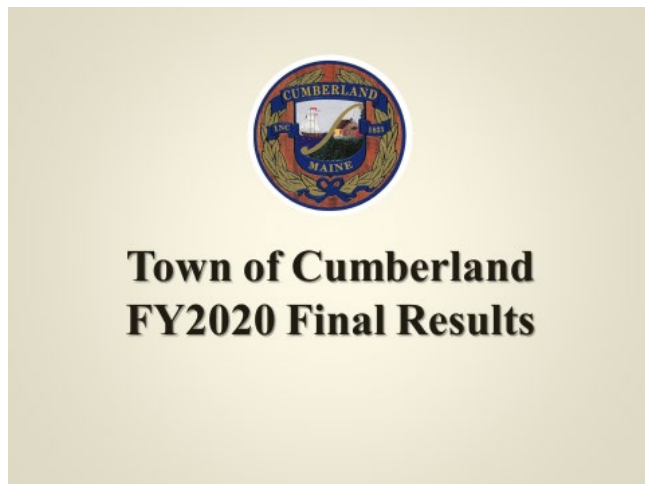
Motion by Councilor Storey-King, seconded by Councilor Edes, to approve the 2021 Shellfish License allocations, as recommended by the Shellfish Conservation Commission.

VOTE: 7-0

UNANIMOUS

**20 – 067 To hear a report from the Finance Director re: 4<sup>th</sup> Quarter Financials.**

Finance Director, Helene DiBartolomeo, presented the following:



<b>General Fund</b>			
<b>FY2020 Revenues &amp; Expenditures</b>			
	FY20 Budget	FY20 Actual	Over (Under) Budget
<b>TOTAL REVENUES</b>	<b>\$ 5,726,256</b>	<b>\$ 5,951,848</b>	<b>\$ 225,592</b>
			<i>Over Budget</i>
Controllable Expenses	\$ 8,826,793	\$ 8,713,315	\$ (113,478)
Fixed Expenses	\$ 21,877,979	\$ 21,945,366	\$ 67,387
<b>TOTAL EXPENSES</b>	<b>\$30,704,772</b>	<b>\$30,658,681</b>	<b>\$ (46,091)</b>
<b>GF Net Revenues over Expenditures</b>			<b>\$ 271,683</b>

## General Fund FY2020 Selected Revenues

	FY20 Budget	FY20 Actual	Over (Under) Budget	FY20 %	FY19 %
Excise Tax	\$ 1,950,000	\$ 2,040,443	\$ 90,443	4.6%	9.3%
State Revenue Sharing	\$ 603,207	\$ 746,067	\$ 142,860	23.7%	3.5%
Permits & Impact Fees	\$ 177,174	\$ 183,115	\$ 5,941	3.4%	8.3%
EMS Billing	\$ 160,000	\$ 178,855	\$ 18,855	11.8%	4.6%
Val Halla - Golf Revenues	\$ 572,921	\$ 583,495	\$ 10,574	1.8%	-0.5%
Recreation	\$ 918,116	\$ 640,262	\$ (277,854)	-30.3%	27.2%

## General Fund FY2020 Selected Expenses

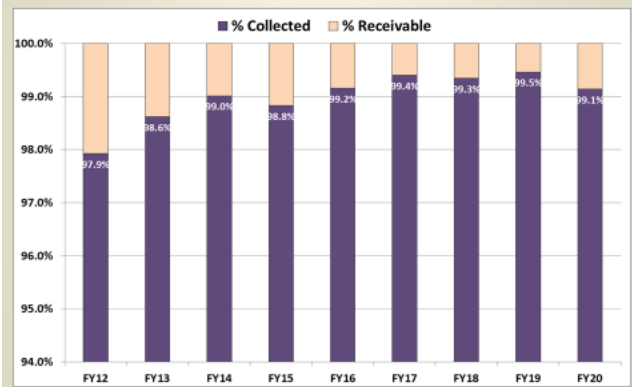
	FY20 Budget	FY20 Actual	Over (Under) Budget	FY20 %	FY19 %
Police	\$ 1,412,547	\$ 1,405,780	\$ (6,767)	-0.5%	-2.9%
Fire	\$ 1,032,324	\$ 1,004,308	\$ (28,016)	-2.7%	-2.5%
Public Services	\$ 2,127,425	\$ 2,015,823	\$ (111,603)	-5.2%	-0.2%
Val Halla Golf Club	\$ 761,933	\$ 766,095	\$ 4,162	0.5%	3.9%
Recreation	\$ 1,048,508	\$ 980,304	\$ (68,204)	-6.5%	8.0%

## Overages by Department

The Operating Budget overages this year can be classified as follows:

130 Administration	\$ (35,394)
140 Assessor	\$ (4,222)
150 Town Clerk	\$ (4,638)
160 Technology	\$ (46,002)
190 Legal	\$ (11,428)
250 Harbor Master	\$ (2,454)
260 Animal Control	\$ (5,548)
320 Waste Disposal	\$ (12,762)
360 Valhalla-Course	\$ (26,430)
450 Library	\$ (13,277)
800 Fire Hydrants	\$ (3,088)
850 Abatements	\$ (35,917)
750 Insurance	\$ (8,988)
650 Debt Service	\$ (58,399)
	<b>\$ (268,547)</b>

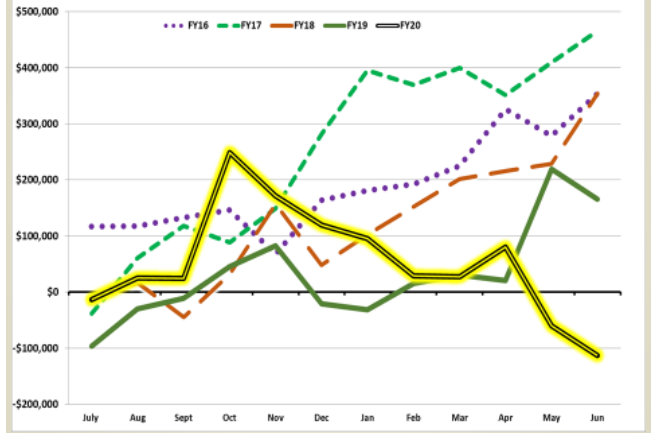
## Tax Collection Rate



## Recommended Uses

				%	Goal - FY 19
FY2019 Ending GF Fund Balance			\$ 2,483,299	8.1%	12.0%
	Budgeted	Actuals			
GF Revenues over (under) budget	\$31,092,623	\$31,368,627	31,368,627		
GF Expenses (over) under budget	\$30,704,772	\$30,658,681	(30,658,681)		
Net change in GF reserve accounts			205,668		
Estimated End of Year funds available:			915,614		
Less transfers for:					
Debt service reserve			(65,000)		
Land Acquisitions			(50,000)		
			(115,000)		
Any additional excess revenues will be added to Fund Balance				%	Goal - FY 20
FY2020 GF Ending Fund Balance			\$ 3,283,913	10.5%	12.0%

## Est. \$ Spent Over (Under) Budget



## Fund Balance

<b>Fund Balance @ 6/30/2020</b>	<b>\$ 3,283,913</b>
<i>10.5% of Revenues</i>	
<b>July &amp; August Operating Costs</b>	<b>\$ (1,320,000)</b>
<b>July &amp; August Revenues</b>	<b>\$ 900,000</b>
<b>July &amp; August School Assessment</b>	<b>\$ (3,156,292)</b>
<b>Balance before September Property Tax Receipts</b>	<b>\$ (292,379)</b>

## Fund Balance

<b>Fund Balance @ 12% of Revenues</b>	<b>\$ 3,764,235</b>
<b>July &amp; August Operating Costs</b>	<b>\$ (1,320,000)</b>
<b>July &amp; August Revenues</b>	<b>\$ 900,000</b>
<b>July &amp; August School Assessment</b>	<b>\$ (3,156,292)</b>
<b>Balance before September Property Tax Receipts</b>	<b>\$ 187,943</b>
<b>Additional Fund Balance needed to reach 12% Fund Balance</b>	<b>\$ 480,322</b>

Chairman Gruber asked for any public comment.  
No public comment.

### **20 – 068 To hold a Public Hearing to authorize the Town Manager to transfer inter-departmental operating funds for FY'20, as recommended by the Finance Committee.**

Town Manager Shane said that he is looking for the Town Council's authorization to transfer excess inter-departmental operating funds to the department budgets that fell short. He is also looking for authorization for the transfers to the property acquisition and debt service reserve funds.

Chairman Gruber opened the Public Hearing.  
Public comment: none  
Chairman Gruber closed the Public Hearing.

Motion by Councilor Vail, seconded by Councilor Foster, to authorize the Town Manager to transfer excess end of year operating revenues and interdepartmental operating balances to close-out all departmental budgets for FY 2020, as recommended by the Finance Committee.

VOTE: 7-0 UNANIMOUS

Motion by Councilor Vail, seconded by Councilor Turner, to authorize the Town Manager to transfer up to \$115,000.00 from end of year excess revenues for projects approved by the Finance Committee and that any additional excess revenues be applied to end of year Fund Balance.

VOTE: 7-0 UNANIMOUS

### **20 – 069 To consider and act on setting October 12<sup>th</sup> – 16<sup>th</sup> as bulky item pick up week.**

Councilor Storey-King reminded the public that if they have a large item that they want to get rid of, Riverside Recycling in Portland is always an option. The Council received some information from Ecomaine recently and Cumberland's numbers are up as far as items being put out for recycling that are not recyclable. The plastic bags that you get from grocery stores are not recyclable. If we have a percentage rate over 5% contamination, it costs us an additional \$36 per ton in our recycling. Everyone should please educate themselves on what is and is not recyclable.

Chairman Gruber asked for any public comment.  
No public comment.

Motion by Councilor Copp, seconded by Councilor Storey-King, to set October 12<sup>th</sup> – 16<sup>th</sup> as bulky item pick up week.

VOTE: 7-0                      UNANIMOUS

**20 – 070    To request a recommendation for the sale of Town owned property located at 4 Blanchard Road from the Lands and Conservation Commission.**

Town Manager Shane explained that this started 2 years ago when we had the land that the Historical Society building sat on appraised. At that time, we were negotiating with Sevee and Maher to purchase the land and we agreed on the appraised value of the land (\$88,000). Since it has been a couple of years since the original negotiation, they went back to the table and he asked Sevee and Maher to include \$12,000 in engineering fees for the Town. He is requesting that the Council send this to the Lands & Conservation Commission for a recommendation.

Chairman Gruber asked for any public comment.  
No public comment.

Motion by Councilor Turner, seconded by Councilor Copp, to send to the Lands and Conservation Commission for a recommendation, the sale of Town owned property located at 4 Blanchard Road, as recommended by the Finance Committee in 2019.

VOTE: 7-0                      UNANIMOUS

**20 – 071    To set a Public Hearing date of September 28<sup>th</sup> to consider and act on accepting a portion of Red Mill Way as a public road, as recommended by the Lands & Conservation Commission.**

Town Manager Shane explained that there was a portion of Red Mill Way between Winterberry, Linden and Hawthorne Courts that got lost in the process of the Town acquiring Hawthorne Court, and it was never accepted as a Town road. The Homeowners Association and the Lands & Conservation Commission have both voted in favor of the acceptance.

Chairman Gruber asked for any public comment.  
No public comment.

Motion by Councilor Storey-King, seconded by Councilor Turner, to set a Public Hearing date of September 28<sup>th</sup> to consider and act on accepting a portion of Red Mill Way as a public road, as recommended by the Lands & Conservation Commission.

VOTE: 7-0                      UNANIMOUS

**20 – 072    To set a Public Hearing date of September 28<sup>th</sup> to consider and act on amendments to Chapter 315 (Zoning), Section 21 (Town Center District), B-12 (Day Care Centers and Nursery Schools), to increase the number of children allowed from 20 to 28, as recommended by the Planning Board.**

Councilor Storey-King explained that this is a request from the daycare center at the Congregational Church and the Ordinance Committee has reviewed it. The daycare is trying to work with the hybrid model that the school is operating under and 28 is the maximum number of children that the State will allow them to have.



Chairman Gruber asked for any public comment.  
No public comment.

Motion by Councilor Edes, seconded by Councilor Foster , to set a Public Hearing date of September 28<sup>th</sup> to consider and act on amendments to Chapter 315 (Zoning), Section 21 (Town Center District), B-12 (Day Care Centers and Nursery Schools), to increase the number of children allowed from 20 to 28, as recommended by the Planning Board.

VOTE: 7-0                      UNANIMOUS

**20 – 073    To set a Public Hearing date of September 28<sup>th</sup> to consider and act on adding a Residential Solar Energy System Ordinance to the Cumberland Code, as recommended by the Ordinance Committee.**

Town Manager Shane explained that the Ordinance Committee met about this and is still waiting for a response from the Town Attorney related to language prohibiting solar arrays being placed in the front yards of homes.

Councilor Storey-King explained that this came up when a resident questioned the setback requirements of residential solar arrays. Currently they are treated as a structure and the setback is further than a shed. She did some research and found an ordinance from Belfast that is very thorough that we can work with. The intent is to have a stand-alone ordinance, like our windmill ordinance.

Chairman Gruber asked for any public comment.

Paul Weiss said that typically, prior to things going to Public Hearing, you would confirm that the proposal meets State requirements. He is a resident who is fully solar at his home and is also a solar professional. He has reviewed this proposal and recommended working with the many companies who install solar arrays, because they all have in-depth knowledge of the regulations and requirements. This ordinance as it is currently written does not comply with State law on multiple accounts.

Councilor Storey-King asked Mr. Weiss to share his findings with her directly in regard to language that conflicts with State law.

Town Manager Shane said that we can wait 2 additional weeks in order to get some more input from the Town Attorney and some solar energy companies. That will give the Ordinance Committee more time to work on it.

Motion by Councilor Copp, seconded by Councilor Vail, to set a Public Hearing date of October 12<sup>th</sup> to consider and act on adding a Residential Solar Energy System Ordinance (Chapter 232) to the Cumberland Code, as recommended by the Ordinance Committee.

VOTE: 7-0                      UNANIMOUS

**V.    NEW BUSINESS**

**Councilor Edes – None**

**Councilor Storey-King – None**

**Councilor Vail – None**

**Chairman Gruber** – The Food Pantry continues to do so much for our community. Thank you to the volunteers who give their time and compassion every week. We have served over 1,500 families to date.

The Planning Board meets tomorrow evening.

He is looking forward to the Employee Appreciation Luncheon this Thursday. Town Hall will be closing at noon that day.

**Councilor Foster** – School started last week and as a parent of a school-aged child, she wants to give a huge shout out to Peter Bingham and his team, who through all of this scrambled and collaborated with North Yarmouth, getting access to the new Westcustago Hall. Parents have care before and after school. This is a huge lifesaver and many families are very grateful.

**Councilor Turner** – He has a neighbor who is in her mid-80's who lost her husband recently. There are a lot of people in that age group who aren't necessarily savvy with technology who we may not be reaching with information. If there is any improvement that we can make to communicate information with our elderly population, we should be focusing on this.

**Councilor Copp** – Before the Council meeting this evening, we had a small farewell gathering for Bill Stiles. It was great to see Bill and some other elders from our Town.

The 4-H auction will still take place even though the fair has been cancelled. Donations are still being accepted to benefit the food pantry. This helps the food pantry customers as well as the 4-H kids who raise the animals that are auctioned.

## **VI. ADJOURNMENT**

Motion by Councilor Vail, seconded by Councilor Storey-King, to adjourn.

VOTE: 7-0 UNANIMOUS

TIME: 9:38 P.M.

Respectfully submitted by,

Brenda L. Moore  
Council Secretary