

MINUTES

Cumberland Town Council Meeting
Town Council Chambers

MONDAY, December 27, 2021

5:30 P.M. Workshop with Westbrook Development Corporation

7:00 P.M. Call to Order

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

I. APPROVAL OF MINUTES

Motion by Councilor Gruber, seconded by Councilor Copp, to accept the December 13, 2021 meeting minutes as presented.

VOTE: 6-0-1 (Edes abstained) MOTION PASSES

II. MANAGER'S REPORT

The railroad quiet zones are scheduled to begin on January 7th. There was a bit of a delay because of an issue on Route 9 that has been resolved.

III. PUBLIC DISCUSSION

No public discussion

IV. LEGISLATION AND POLICY

21 – 122 To hold a Public Hearing for the purpose of hearing public comment on the adoption of Chapter 86 (Medical Marijuana Registered Caregiver Licensing) of the Cumberland Code.

Chairman Vail explained that the Town Council enacted a moratorium in order to develop a Medical Marijuana Registered Caregiver Licensing Ordinance. We have a draft ordinance and the Chair of the Ordinance Committee, Councilor Storey-King, will give an overview. The Town Attorney is present this evening to answer any questions.

Councilor Storey-King said that in 1999, medical marijuana became legal in Maine. In 2016, adult use became legal. The State has been wrestling with legislation ever since, and municipalities have been trying to keep up with the changes that the State keeps making. The Ordinance Committee feels that someday, this is going to be legal and obtainable at variety stores, just like alcohol. In the meantime, it is important for us to protect our neighbors and neighborhoods from some of the side effects of growing and selling medical marijuana. In November of 2018, the Ordinance Committee recommended, and the Town Council approved, 3 overlay zones for the sale of medical marijuana (on Route One, Route 9 and Route 100). We currently have 32 licensed caregivers in our community. In 2021, we had a complaint from a neighbor of an outdoor grower, and we have had 3 facilities in West Cumberland that have been approved for the sale of medical marijuana. The Route 100 neighborhood has voiced concern about the number of facilities in that area. Approximately 6 months ago, the Town Council passed a moratorium and has been working on our ordinance ever since. We looked at other Town's ordinances, worked with legal counsel, and have drafted what we think is a very good ordinance.

Town Attorney, Ben McCall, explained that he has been working with Town staff and the Ordinance Committee in developing this ordinance. In the zoning portion of the Town code, it is clear that new registered caregivers are only allowed to set up shop in the overlay districts of Town. Later this evening, potential changes to that overlay district that would further restrict that availability. We are aware that there are registered caregivers in Cumberland that operate both inside and outside of that overlay district. Many of them

were likely operating before the overlay district came into place. This licensing ordinance does not prescribe exactly where or where not a registered caregiver may physically operate. That is left to the land use sections of the Town code. If a new registered caregiver wants to operate in Cumberland, they must do so within the overlay zone as it exists now, and perhaps as it is amended later. Those operating outside the overlay district now may continue in their same capacity, but setting that aside, if this Ordinance is enacted, every registered caregiver will need to be licensed by the Town every year in order to continue their operation. If they don't comply with the ordinance, then the Town would have the authority to force them to cease operations. Attorney McCall briefly reviewed the ordinance.

Councilor Edes said that the \$3,000 licensing fee is a lot of money when compared to the cost of a liquor license.

Councilor Segrist asked if anyone did the math in regard to the cost of staff time and the license fee.

Attorney McCall said that there was discussion with Town staff and the Ordinance Committee about the possible costs generally of administering the ordinance. It is higher than victualer's and other licenses, but there is also a certain amount of specificity that is involved that accounts for that. But no, there was not a calculation of staff time cost.

Councilor Edes asked if we can charge a fee the first year, and then a different renewal fee the following years.

Attorney McCall said yes, that could be done.

Chairman Vail said that the piece that stands out for him is the word medical. We're not talking about recreational marijuana, alcohol or buying a pack of cigarettes. We're talking about medical use, so he feels that level of scrutiny allows for a different bar being set. He is hopeful that there will be further legislation coming from the State because he has concerns about what kind of medicine we're distributing without a pharmacist being involved. He asked Attorney McCall if there is any legislation in the works that may affect our ordinance.

Attorney McCall said that during the last legislative session there was an in-depth discussion about how the State is going to coalesce both the medical program and the adult use program into one set of guidelines. There is a working group that has almost completed its work and potential legislation could affect how things are run. He does not anticipate that the Town's home rule authority to have a licensing requirement for medical marijuana is going to be affected by the legislature. There may be tweaks necessary in the future, as with any ordinance.

Chairman Vail opened the Public Hearing.

Andrew Pettengill of 93 Lower Methodist Road, with a business address of 22 Gray Road, said that he appreciates all the work that the Town has put into this ordinance. His business has gone through the process recently and has received a Certificate of Occupancy by the Town. He has gone through the process in the City of Portland for 2 years and went through 2 lawsuits. He feels that the Town should look at land use, that is important, and we might want to stop the entire ordinance and deal with land use first. Just like the City of Portland did. This would allow the time for the Town to do their research. He does not feel that the attorney has put in enough work to show the Town Council what is really going on. As a business owner, he did do the research and as this ordinance is written, his business will shut down. He is all for a fee, but it doesn't have to be \$3,000. This ordinance goes way beyond State regulation, and he feels that is a little bit too far. He agrees with the insurance and safety stipulations. He looks forward to continuing working with the Town.

Rick Doane of 4 Catulpa Lane said that he supports the ordinance. He does not think that the Council ought to have the discretionary authority to waive application fees. The ordinance speaks about the consent of a property owner when a tenant is applying for a license. To him, that should not be waivable.

Andrew Pettengill said that the Town Council should look into what Portland has done. Portland has done a good job. To try to create something new for the Town is a lot of taxpayer money that is not necessary. Does the Town's law firm even have marijuana expertise or clients? Who wrote this ordinance?

Councilor Storey-King responded that we began this process by looking at Portland's ordinance (as well as other Town's), borrowed some of their language and worked with our attorneys to craft our ordinance.

Kelly Copp of Windham, with a facility at 210 Gray Road, asked why the Town is preventing married couples from each obtaining a license.

Town Manager Shane said that this was discussed by the Ordinance Committee, and it was decided to allow one license per map and lot. The terminology related to a husband and wife as described by State law was also discussed, and it came back to one per map and lot.

Ms. Copp asked if anyone on the Town Council has been to her location, in her building, or asked to come see what they do.

Councilor Storey-King said no.

Ms. Copp said that the Town Council has put together all of these guidelines with the help of the Town Attorney, and the Town Council has the final say if she gets a license or not, but they have never been to her location.

Chairman Vail said that we have been working on this for 6-months. This is ample time for anyone concerned to approach this Council instead of showing up at the 11th hour with an accusatory tone. If Ms. Copp would like to invite the Council to come tour her facility, he would be happy to go.

Ms. Copp said that the Town Council sits here and judges, whether it be medical or pharmaceutical, please come to her facility and see what they do for people. This ordinance requires duplication of process for what the State requires.

Councilor Foster explained that on the agenda this evening are 2 liquor license renewals. A lot of the burden of the application review and compliance has been done by the Town staff. Staff writes a memo to the Town Council that says that they have reviewed everything, the business is in compliance, and staff is recommending approval. It's not a matter of do we like this business, it's more a question of if that business is following the rules that are laid out in our ordinances. If they are, it is approved. It's the trust we have that our Town employees are going through the process and making a recommendation to approve or not approve.

Chairman Vail closed the Public Hearing.

21 – 123 To set a Public Hearing date of January 24th to consider and act on the adoption of Chapter 86 (Medical Marijuana Registered Caregiver Licensing) to the Cumberland Code, as recommended by the Ordinance Committee.

No public comment.

Motion by Councilor Gruber, seconded by Councilor Copp, to set a Public Hearing date of January 24th to consider and act on the adoption of Chapter 86 (Medical Marijuana Registered Caregiver Licensing) to the Cumberland Code, as recommended by the Ordinance Committee.

VOTE: 7-0 UNANIMOUS

21 – 124 To forward to the Planning Board for a Public Hearing and recommendation, an amendment to the Town of Cumberland Official Zoning Map to eliminate the Medical Caregiver Overlay District from the Village Center Commercial Zone.

Town Manager Shane explained that the Town Council will meet in West Cumberland in February to discuss a potential redevelopment plan on Route 100. When we look at the three-marijuana business in West Cumberland within close proximity to each other, it seemed like that was enough for one area. This would grandfather the businesses that are currently in that zone.

No public comment.

Motion by Councilor Copp, seconded by Councilor Gruber, to forward to the Planning Board for a Public Hearing and recommendation, an amendment to the Town of Cumberland Official Zoning Map to eliminate the Medical Caregiver Overlay District from the Village Center Commercial Zone.

VOTE: 7-0 UNANIMOUS

21 – 125 To set a Public Hearing date of January 10th to extend the medical marijuana caregiver moratorium for up to an additional 180 days.

Chairman Vail said that the moratorium extension may not be necessary, but this will protect the Village Center Commercial Zone in the event that there is a storm, and the Planning Board or Council meetings are cancelled and some applications are submitted during that time.

No public comment.

Motion by Councilor Storey-King, seconded by Councilor Segrist, to set a Public Hearing date of January 10th to extend the medical marijuana caregiver moratorium for up to an additional 180 days.

VOTE: 7-0 UNANIMOUS

21 – 126 To hold a Public Hearing to consider and act on amendments to Chapter 48 (Coastal Waters) of the Cumberland Code, as recommended by the Coastal Waters Commission.

Mike Schwindt, Vice-Chairman of the Coastal Waters Commission explained that at their last meeting, the Commission increased the number of moorings in Broad Cove from 35 to 38 for 2022. We have 36 people on a waiting list, so this will help a bit. Docking space for dinghies is quite crowded and adding more moorings will only exacerbate that situation. The Commission also elected to raise the moorings fees from \$50 to \$250 for residents

and \$150 to \$300 for non-residents. We are also establishing a dinghy registration fee of \$50 and \$100 for residents and non-residents. This will be a breakeven revenue source to cover our Harbor Master's costs.

Councilor Edes asked Mr. Schwindt why the Commission feels that a 200% increase in mooring fees is justifiable.

Mr. Schwindt said that we are simply trying to cover the cost of our Harbor Master. Comparably, our mooring fees are less than those of our surrounding Towns.

Councilor Segrist asked Mr. Schwindt how many moorings are used by residents versus non-residents.

Mr. Schwindt said that a very small number are being used by non-residents. State law requires us to accommodate non-residents.

No public comment.

Motion by Councilor Storey-King, seconded by Councilor Gruber, to amend Chapter 48 (Coastal Waters) of the Cumberland Code, as recommended by the Coastal Waters Commission.

VOTE: 7-0 UNANIMOUS

21 – 127 To hold a Public Hearing to consider and act on amendments to Chapter 84 (Fees and Fines), Section 12 (Moorings) of the Cumberland Code, as recommended by the Coastal Waters Commission.

Chairman Vail explained that this item will amend the mooring fees as discussed in the previous item.

No public comment.

Motion by Councilor Gruber, seconded by Councilor Edes, to amend Chapter 84 (Fees and Fines), Section 12 (Moorings) of the Cumberland Code, as recommended by the Coastal Waters Commission.

VOTE: 7-0 UNANIMOUS

21 – 128 To hold a Public Hearing to consider and act on amendments to Chapter 250 (Subdivision of Land), Section 37 (General Street Standards), Subsection A-8, and Attachment 2, Table 3, to clarify the classification levels, as recommended by the Planning Board.

Town Manager Shane said that this is simply a housekeeping item. It clarifies limits on different classifications of roads.

Chairman Vail opened the Public Hearing.

No public comment.

Chairman Vail closed the Public Hearing.

Motion by Councilor Copp, seconded by Councilor Segrist, to amend Chapter 250 (Subdivision of Land), Section 37 (General Street Standards), Subsection A-8, and Attachment 2, Table 3, to clarify the classification levels, as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS

21 – 129 To hold a Public Hearing to consider and act on a Liquor License renewal for Flannel Shirt Food Company, LLC d/b/a Cumberland Food Company.

Chairman Vail opened the Public Hearing.
No public comment.
Chairman Vail closed the Public Hearing.

Motion by Councilor Segrist, seconded by Councilor Storey-King, to approve the Liquor License renewal for Flannel Shirt Food Company, LLC d/b/a Cumberland Food Company.

VOTE: 7-0 UNANIMOUS

21 – 130 To hold a Public Hearing to consider and act on a Liquor License renewal for Louie’s Grille, LLC.

Chairman Vail opened the Public Hearing.
No public comment.
Chairman Vail closed the Public Hearing.

Motion by Councilor Gruber, seconded by Councilor Edes, to approve the Liquor License renewal for Louie’s Grille, LLC.

VOTE: 7-0 UNANIMOUS

21 – 131 To appoint members to Boards and Committees.

Motion by Councilor Copp, seconded by Councilor Gruber, to reappoint:

BOARD OF ADJUSTMENTS & APPEALS: Christian Lewis, Michael Martin & Peter Lacy

BOARD OF ASSESSMENT REVIEW: Amanda Billing

BOARD OF SEWER APPEALS: Ralph Oulton & Rhonda Grigg

COASTAL WATERS COMMISSION: (1 vacancy) David Carlson, Hugh Judge & Richard Thompson

CUMBERLAND HOUSING AUTHORITY: Connie Bingham, Norman Maze, Jr. & Sally Pierce

LANDS & CONSERVATION COMMISSION: Ellen Hoffman & John Jensenius

Melissa Cott to the Forestry subcommittee

Shaun Breton, John Jensenius & Don Stowell to the Trails subcommittee

PLANNING BOARD: Paul Auclair & Jason Record

PARKS & RECREATION COMMISSION: Travis Seaver & Don Stowell

PERSONNEL APPEALS BOARD: Mary Porter & Doug Pride

PRINCE MEMORIAL LIBRARY ADVISORY BOARD: David Echeverria & Linda Putnam

SHELLFISH CONSERVATION COMMISSION: Peter DelBianco & Robert Maloney

To appoint: George Turner and Pete Wilson to the Lands & Conservation Commission, and George Turner to the Coastal Waters Commission.

No public comment.

VOTE: 7-0 UNANIMOUS

V. **NEW BUSINESS**

Councilor Segrist – in regard to our “Open for Business” initiative, the Town Manager alluded that we will be having a meeting in West Cumberland to talk about some exciting redevelopment ideas for that area.

In regard to the Senior Property Tax Assistance program, he met with Town staff recently and things are moving along nicely with development of that program. He is hopeful that he can present something to the Council within the next couple of weeks.

Councilor Storey-King – in response to a comment earlier about marijuana growing odors being compared to farm odor, we all need to understand that agriculture has federal regulations and even if communities wanted to regulate some farm-based businesses, there is very little that could be done.

She thanked the workshop guests that we had tonight. Tyler Norod of Westbrook Development Corporation talked to the Council about some opportunities that we can look into to bring assisted living/senior housing to our community.

She wished everyone a Happy New Year.

Councilor Gruber – no new business.

Chairman Vail – he thanked everybody for their thoughtful comments and a good discussion this evening. He looks forward to working with his fellow Councilors next year and thanked the Town Manager for all that he does.

Councilor Foster – she and the Communications Director met and reviewed the Council’s submissions on the survey questions. The Council will receive a copy of the survey to review by next week. She requested that an item be added to the next Council agenda to formally review the survey as a group, gather feedback from the Council, and then the goal is to be able to start getting the word out to residents what the intent of the survey is and that it will be released to the public by the end of January or early February.

There were definitely some high points to the past year. She is grateful to have spent a lot of time with her fellow Town Councilors and is looking forward to a happy new year and wished everyone the same.

Councilor Edes – he sent well wishes to Brenda who is home not feeling well.

Councilor Copp – he made his donation to the 4-H fund that benefits the food pantry and reminded everyone that this is a very worthy cause.

Thank you to Cumberland Public Works for working on Christmas day. If anyone saw him getting sand from the Town sand pile on Christmas day, it was not for his own use. He used it to get our rescue unit, that was stuck on a very icy driveway on Pleasant Valley Road. He did not charge the Town for pulling the rescue unit out on Christmas day. Merry Christmas!

VI. ADJOURNMENT

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

VOTE: 7-0 UNANIMOUS

TIME: 8:52 P.M.

Respectfully submitted by,

Brenda L. Moore

Council Secretary

(Minutes prepared from recording, not present at meeting)