

## **MINUTES**

Cumberland Town Council Meeting

Town Council Chambers

**MONDAY, June 20, 2011**

**6:30 p.m. Finance Committee Meeting**

### **7:00 p.m. Call to Order**

**Present:** Chairman Storey-King, Councilors Moriarty, Stiles, Perfetti, Gruber, and Copp

**Excused:** Councilor Turner

### **I. APPROVAL OF MINUTES**

June 6, 2011

Motion by Councilor Moriarty, seconded by Councilor Copp, to accept the minutes as presented.

VOTE: 5-0-1 (Gruber abstained)

### **II. MANAGER'S REPORT**

The Patriot Flag Tour will be at Moss Side Cemetery on Thursday, June 23<sup>rd</sup> from 7:00 a.m. to noon.

The flag has flown in 40 states and it is a great honor to have it in Cumberland. The Patriot Flag is 30 x 57 feet and will tour the United States in honor of those fallen on September 11, 2001.

Cumberland mail is now being distributed through the Yarmouth Post Office. The purpose is to defray costs and the Cumberland Post Office will remain open post office boxes and counter service. However, the mail delivery will be approximately 2 hours later than usual. The Manager requested that a letter be written to State Senators and Representatives, on behalf of the Town Council, advising them that the Post Office is an important part of our community and we would like assurances that it will remain open.

The first coat of pavement is going on Route 88. The final coat is expected to be completed by early August. The project is on budget and the Manager thanked Storey Brothers for their great work.

Town Manager Shane thanked Chairman Storey-King for a great year and presented her with the flag that has flown over Town Hall during her year as Council Chair.

### **III. PUBLIC DISCUSSION**

Chairman Storey-King thanked Town Manager Shane and Brenda Moore for their bi-weekly Council Agenda setting meetings. These meetings were very helpful and she will miss them. She thanked her fellow Councilors for their hard work. She is looking forward to the continuation of the Drowne Road Revitalization Project. She is very proud of this project and the transparency of the process.

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

#### **11 – 100 To swear in newly elected Councilors.**

Town Clerk, Tammy O'Donnell, administered the oath of office to Councilors Gruber and Stiles.

#### **11 – 101 Election of Council Chair and Vice-Chair.**

Motion by Councilor Moriarty, seconded by Councilor Copp, to nominate Councilor Perfetti as Council Chair.

VOTE: 6-0

UNANIMOUS PASSAGE

Motion by Councilor Storey-King, seconded by Councilor Stiles, to nominate Councilor Moriarty as Council Vice-Chair.

VOTE: 5-0-1 (Moriarty abstained) MOTION PASSES

**11 – 102 To hold a Public Hearing to authorize the Code Enforcement Officer to enter into a Consent Decree with property owners located at 18 Frye Drive.**

Town Manager Shane explained that several decades and 3 owners ago, a garage was built on this property that was too close to the property line. The present owners have sold the property and during a mortgage survey, it was discovered that the garage was 27 feet away from the property line and the ordinance requires 50 feet. The consent agreement will allow the garage to remain where it is and future property owners will not have an issue. Historically, the penalties assessed in these situations have been \$500 - \$1000, which cover legal and administrative costs. The suggested penalty assessed in this case is \$500, but the amount is at the discretion of the Council.

The owner of the property, Dennis Vealitzek, said that the boundary line pins have not been visible for some time and when the building permit was issued (in 1991), the builder submitted a sitemap with the building permit application that illustrated the setback at 56 feet. Mr. Vealitzek said that he understands that the fee is not intended to be a penalty, but rather to defray costs to the Town as the Town Manager explained. However, after 20 years, 3 owners, and nobody ever questioning the property line or setback, it seems a bit excessive to have to pay \$500. He respectfully requested the consideration of a lesser fee or perhaps waiving the fee altogether.

Public discussion: None

Councilor Copp said that it is obvious that Mr. Vealitzek did not create this problem, but the Town cannot afford to waive the fee. He feels badly about the situation.

Councilor Moriarty explained that the Town does not aggressively search for these types of minor boundary issues and this situation came up during a mortgage survey. In order to close the loan approval for the sale of the property, this discrepancy needs to be taken care and that will involve some legal and Town work. The fee imposed is an effort on the Council's part not to make the taxpayers responsible for the costs incurred. It is not pleasant to have to ask anyone to pay the fee, but it is the responsible thing to do for the citizens.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to authorize the Code Enforcement Officer to enter into a Consent Decree with property owners located at 18 Frye Drive, and to assess a fee of \$500.00 to cover all legal and administrative expenses.

VOTE: 6-0 UNANIMOUS PASSAGE

**11 – 103 To consider and act repealing and replacing the Twin Brook Facility Use Policy as recommended by the Twin Brook Facility Advisory Committee.**

Town Manager Shane explained that the Twin Brook Committee has done a great job in separating out the policies and rules and adding a lightening policy. The changes include formatting and moving sections around, making it easier to read and understand. John Leavitt from the Twin Brook Committee was present to answer any questions.

Councilor Gruber asked Mr. Leavitt if the committee considered whether it should be noted in the Lightning Policy where people should go in the event of a thunder/lightning storm. He feels that some wording should be included.

Mr. Leavitt agreed that the committee would look at adding wording to the Lightning Policy advising people where to take shelter during a thunder/lightning storm.

Motion by Councilor Stiles, seconded by Councilor Copp, to repeal and replace the Twin Brook Facility Use Policy as recommended by the Twin Brook Facility Advisory Committee.

VOTE: 6-0

UNANIMOUS PASSAGE

**11 – 104 To hold a Public Hearing to consider and act on amendments to the Coastal Waters Ordinance as recommended by the Planning Board.**

This is a housekeeping issue to clean up the Coastal Waters Ordinance to delete some Chebeague Island and harbor references. Staff and the Planning Board are recommending approval.

Public discussion: None

Motion by Councilor Moriarty, seconded by Councilor Gruber, to amend the Coastal Waters Ordinance as recommended by the Planning Board.

VOTE: 6-0

UNANIMOUS PASSAGE

**11 – 105 To hold a Public Hearing to consider and act on amendments to the Shoreland Zoning Ordinance as recommended by the Planning Board.**

Town Manager Shane explained that when the Shoreland Zoning Ordinance was converted to a standalone ordinance, the section on lighting was inadvertently omitted.

Public discussion: None

Councilor Gruber said that as a member of the Planning Board the addition of this definition makes a lot of sense because there was no definition of lighting when reviewing applications.

Councilor Storey-King suggested the following amendment to the language:

*Lighting on piers, wharves, docks, floats and other structures should be designed and installed to minimize negative impacts on other properties and to promote safe navigation at night.*

Motion by Councilor Copp, seconded by Councilor Gruber, to amend the Shoreland Zoning Ordinance as recommended by the Planning Board and with Councilor Storey-King's amendment.

VOTE: 6-0

UNANIMOUS PASSAGE

**11 – 106 To award the Tax Anticipation Note borrowing for FY'12 for \$3 million dollars.**

Finance Director, Alex Kimball explained that the amount of borrowing is the same as last year and the winning bank was Androscoggin Bank with an interest rate of 1.09%

Motion by Councilor Stiles, seconded by Councilor Storey-King, to award the Tax Anticipation Note borrowing for FY'12 for \$3 million dollars to Androscoggin Bank at an interest rate of 1.09%.

VOTE: 6-0

UNANIMOUS PASSAGE

**11 – 107 To consider and act on Commercial Hauler's License renewals for FY'12.**

Town Manager Shane explained that these are the annual renewals for commercial trash haulers and staff is recommending approval.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to approve an FY'12 Commercial Hauler's License renewal for Reynolds & Sons Disposal Service, Waste Management of Maine, BBI Waste Industries, Troiano Waste Service, and Pine Tree Waste.

VOTE: 5-0-1 (Copp abstained)

MOTION PASSES

**11 – 108 To hear a report from the Finance Committee Chair and to authorize the Town Manager to transfer inter-departmental operating funds.**

Town Manager Shane explained that per the Town Charter the Town Council has to authorize the Manager to move monies between different departments. Over the course of a year, we have approximately \$8 million in expenses in various operating funds. Those operating funds were \$14,000 under budget this year. The revenues look like they will be on target, and the budget projections for the year have essentially been met.

This is an accounting procedure that is done each year to prepare for the auditors and close out the books for the current fiscal year.

Motion by Councilor Storey-King, seconded by Councilor Copp, to authorize the Town Manager to transfer inter-departmental revenues and expenses to balance and close out the FY2011 budget, and I move to authorize that the following amounts be transferred from the end of year fund balance to the following accounts:

Circuit Breaker Fund: \$50,000

Veterans Monument Fund: \$30,000

Heating Fund: \$15,000

Val Halla Inter-fund Loan Payable: \$97,000

And, the remainder of all fund balances be applied to the fund balance consistent with the new Fund Balance Policy adopted on May 23, 2011.

VOTE: 5-1 (Stiles opposed)

MOTION PASSES

**11 – 109 To hear a report on potential amendments to the Resource Protection setbacks.**

Town Manager Shane explained that several years ago, the Department of Environmental Protection issued resource protection setback rules for moderate or high value waterfowl and wading bird habitat areas. Knight's Pond is the only area impacted in Cumberland. Instead of a 75' setback from the water, this area has a 250' setback. The Governor's office has requested that the DEP establish rulemaking to allow municipalities to choose if the RP designation is required or if it should revert to a 75' setback. This will be a 6 – 18 month process at the DEP level and until the rules are in place, the Manager is not recommending any action from the Council.

**11 – 110 To hold a Public Hearing to consider and act on a Class I Liquor License and Victualer's License application for The Cumberland County Republican Committee "Reagan Rodeo" fundraiser to be held at the Cumberland Fairgrounds on June 26, 2011.**

Town Manager Shane said that the application is complete and staff is recommending approval.

Public discussion: None

Motion by Councilor Storey-King, seconded by Councilor Moriarty, to approve the Class I Liquor License and Victualer's License application for The Cumberland County Republican Committee "Reagan Rodeo" fundraiser to be held at the Cumberland Fairgrounds on June 26, 2011.

VOTE: 6-0

UNANIMOUS PASSAGE

**11 – 111 To hold a Public Hearing to consider and act on a Mass Gathering Permit for the Cumberland Soccer Club Labor Day "Just For Fun" Soccer Tournament to be held at Twin Brook Recreational Facility on September 3<sup>rd</sup> & 4<sup>th</sup>, 2011.**

Town Manager Shane explained that his is a great event that takes place annually. The application is complete and staff is recommending approval.

Public discussion: None

Motion by Councilor Gruber, seconded by Councilor Copp, to approve the Mass Gathering Permit for the Cumberland Soccer Club Labor Day "Just for Fun" Soccer Tournament to be held at Twin Brook Recreational Facility on September 3rd & 4th, 2011.

VOTE: 6-0

UNANIMOUS PASSAGE

# **11 – 112 FY'12 Council Committee Assignments.**

The following is the list of FY'12 Council Committee Assignments:

## AD HOC COMMITTEES:

Board of Appeals	<u>Councilor Turner</u>
Coastal Waters Commission	<u>Councilors Gruber and Turner</u>
Cool Cities Committee	<u>Councilor Copp</u>
Housing Authority	<u>Councilor Stiles</u>
Lands & Conservation Commission	<u>Councilors Gruber and Moriarty</u>
Planning Board	<u>Councilor Moriarty</u>
Prince Memorial Library Advisory Board	<u>Councilor Moriarty</u>
Recreation/Community Education Advisory Board	<u>Councilor Storey-King</u>
Rines Forest Committee	<u>Councilor Moriarty</u>
Shellfish Conservation Commission	<u>Councilors Gruber and Turner</u>
Twin Brook Advisory Committee	<u>Councilors Gruber, Moriarty, and Storey-King</u>
Val Halla Board of Trustees	<u>Councilors Stiles, Perfetti, and Turner</u>
Veteran's Monument Committee	<u>Councilor Moriarty</u>

## COUNCIL COMMITTEES:

Board/Committee Nominating Committee	<u>Councilor Copp, Perfetti, and Turner</u>
Circuit Breaker Committee	<u>Councilors Stiles, Copp, and Storey-King</u>
Cumberland/No.Yarmouth Joint Liaison Comm.	<u>Councilors Moriarty, Stiles, and Turner</u>
Falmouth/Cumberland Chamber of Commerce	<u>Alyssa Daniels/Councilor Turner</u>
Finance Committee	<u>Councilors Stiles, and Gruber</u>
Greater Portland Council of Government	<u>Councilor Turner</u>
Ordinance Committee	<u>Councilors Moriarty, Storey-King, and Turner</u>
TIF Committee	<u>Councilors Gruber, Turner, and Stiles</u>

Motion by Councilor Stiles, seconded by Councilor Gruber, to approve the Town Council Committee Assignments for 2011-2012 as listed above.

VOTE: 6-0

UNANIMOUS PASSAGE

**11 – 113 To hear a report and authorize the Town Manager to execute an agreement between the Towns of Cumberland and North Yarmouth for Recreation, Library, Parks Maintenance, Government Access Channel (Channel 2), Animal Control Officer, and winter sidewalk plowing services for FY'12.**

Chairman Perfetti said that many people worked hard to make this happen for all the services that we share. He thanked Councilors Turner and Stiles for the time they spent articulating our position to the North Yarmouth Board of Selectmen. He thanked all the residents of North Yarmouth for having the discussion, and all the people who worked tirelessly to help North Yarmouth government and citizens try to understand what our two communities share and value together. He thanked Town Manager Shane, who patiently and diligently explained our position while delivering accurate and comprehensive information to any and all who asked for it. Our Manager is a lesson in good government. He thanked anyone he may have left out who had a part in maintaining this very important relationship between Cumberland and North Yarmouth. We look forward to strengthening that relationship in the coming months and years.

Town Manager Shane said that it was a very contentious meeting in North Yarmouth last Saturday and there is a lot of healing that has to happen. He sent an e-mail to North Yarmouth Administrative Assistant, Marnie Diffin, which outlines things to come, getting everything on the table and keeping communication open. Meetings between the two towns will begin in July, open to the public and posting notes of the meetings on our website. It will not help either community to allow the hurt feelings to continue to fester.

Manager Shane addressed Paul Napolitano, who was in the audience, saying that if he offended Mr. Napolitano in any way, he apologizes. He meant no disrespect to him personally and he is sorry if he felt that way.

Even though this is not a public hearing, Chairman Perfetti offered Mr. Napolitano the opportunity to speak to the Council. He declined.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to authorize the Town Manager to execute an agreement between the Towns of Cumberland and North Yarmouth for Recreation, Library, Parks Maintenance, Government Access Channel (Channel 2), Animal Control Officer, and winter sidewalk plowing services for FY'12.

VOTE: 6-0

UNANIMOUS PASSAGE

Motion by Councilor Moriarty, seconded by Councilor Copp, to amend the previous motion replace the phrase "Parks Maintenance" with "Twin Brook Maintenance" as it is referred to in the agreement.

VOTE: 6-0

UNANIMOUS PASSAGE

**11 – 114 To hold a Public Hearing to consider and act on sending to the Planning Board for a Public Hearing and a recommendation, amendment to the Cumberland Zoning Ordinance to remove Retail as a permitted use in the Office Commercial South (OCS) Zone.**

Councilor Moriarty explained that he and Councilor Turner attended a neighborhood meeting on the Exactitude project to be located on Lot One in the Chase subdivision. At that meeting, Councilor Moriarty acknowledged to the group that an oversight happened a year ago by allowing these two permitted uses as part of a large series of zone changes. Those in attendance seemed to understand how this happened and there was strong opposition to retail as a permitted use in the OC South Zone.

Public discussion: None

Motion by Councilor Moriarty, seconded by Councilor Stiles, to forward to the Planning Board for a Public Hearing and a recommendation, amendment to the Cumberland Zoning Ordinance to remove Retail as a permitted use in the Office Commercial South (OCS) Zone.

VOTE: 6-0

UNANIMOUS PASSAGE

## **V. NEW BUSINESS**

**Councilor Copp:** The Cumberland Maine Business Association is sponsoring an open house on Route 100 this Saturday. It starts at the Board Barn at 9:30 a.m. Every business along Route 100 will have specials and/or door prizes. Things are starting to move in a positive direction in West Cumberland and he hopes a lot of people will attend on Saturday.

The situation with North Yarmouth has gotten out of hand. He suggested quarterly meetings with the Council and the North Yarmouth Selectman.

**Councilor Gruber:** Thank you to the community for their confidence in him and their votes. He thanked his two opponents, Sally Leavitt and Mike Edes. He thanked Councilor Moriarty for moderating "Meet the Candidates Night". He thanked Town staff for their hard work during election time. He urged the citizens to get involved with a Town committee. You learn a lot about the community when serving on a committee.

**Councilor Storey-King:** Thanked the Cumberland Historical Society for another fascinating newsletter.

**Chairman Perfetti:** He thanked everyone for their support and hopes he will do as good a job as Councilor Storey-King did as Chairman.

**Councilor Stiles:** Thank you to Councilor Storey-King for her time as Council Chair.

Requested an update on Range Road from the Manager

Town Manager Shane said that it is anticipated that the paving will be complete by mid to late August.

**Councilor Moriarty:** Thank you to Chairman Storey-King for her year of service as Council Chair, and thank you to all those residents who voted last week.

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

Motion by Councilor Stiles, seconded by Councilor Copp, to recess to Executive Session pursuant to 1 M.R.S.A., § 405(6)(C) re: real property acquisition.

VOTE: 6-0

UNANIMOUS PASSAGE

TIME: 8:39 p.m.

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

VOTE: 6-0

UNANIMOUS PASSAGE

TIME: 8:51 p.m.

## **VII. ADJOURNMENT**

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

VOTE: 6-0

TIME: 8:52 p.m.

Respectfully submitted by:

Brenda L. Moore  
Council Secretary