

MINUTES

Cumberland Town Council Meeting
Town Council Chambers

MONDAY, OCTOBER 11, 2010

6:00 p.m. – Meeting opened by Chairman Storey-King.

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

Councilor Moriarty arrived at 6:07 p.m.

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

VOTE: 6-0 UNANIMOUS PASSAGE

Motion to return from Executive Session by Councilor Perfetti, seconded by Councilor Copp.

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 7:00 p.m.

7:03 p.m. – Call To Order to return to regular session.

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

I. APPROVAL OF MINUTES September 13, 2010

Motion by Councilor Porter, seconded by Councilor Perfetti, to accept the September 13, 2010 minutes as presented.

VOTE: 6-0-1 Abstention (Moriarty) PASSAGE

September 22, 2010

Motion by Councilor Copp, seconded by Councilor Turner, to accept the September 22, 2010 minutes as presented.

VOTE: 6-0-1 Abstention (Perfetti) PASSAGE

II. MANAGER'S REPORT

269 Gray Road was a piece of property that the Town, PROP, and Maine State Housing Authority joined efforts on back in 2005 to help a family into a home. The Town had a \$25,000 mortgage on the property, PROP had a \$35,000 mortgage, and MSHA had a \$35,000 mortgage on it. The original residents of the home have passed away and a lot of damage was done to the house by the most recent occupants (who have since moved out). The Town took ownership of the property last December, repaired the damage, and listed the house for sale. Real Estate Agent, Jeff Daigle was able to sell the property in less than 2 months, to a first time home buyer, recovering all the money invested.

Stornoway Road will be under construction for the installation of a new underground power line. CMP is working with Shaw Brothers Construction. According to CMP, this will eliminate the many power outages that have occurred over the past 5 years in that area.

The Veterans Monument donation drive has pretty much stalled. This is a worthwhile community project and we are hoping to be able to re-energize the fundraising efforts. A family, who wishes to remain anonymous, has come forward to generously offer to match all donations through the end of the year, up to \$5,000.00. It would be wonderful to have the two name stones in place for next Memorial Day. In order to do so, the order would have to get to the monument company by mid-January.

III. PUBLIC DISCUSSION

Teri Maloney-Kelly of Maloney's Ridge Way read the following letter to the Council:

I am Teri Maloney-Kelly, 29 Maloney's Ridge Way in West Cumberland. I am here this evening to request the Council to review 2 of the "permitted uses" in the zoning ordinances for Rural Residential District 1, Rural Residential District 2 and the Low Density Residential District herein after referred to as RR1, RR2 and LDR. These zones encompass approximately 80% of the households in our Town. The Rural Residential Districts are described in Section 204.1 of the Zoning Ordinance: "The RR districts primarily allow agriculture, low density residential and other low density uses with the intent of maintaining significant amounts of open space and a generally rural character." It is very likely that those of you watching from home live in one of these areas where the residential flavor of your neighborhood could be in jeopardy.

Approximately 6 weeks ago, as a result of excessive commercial vehicle noise and traffic and construction equipment noise affecting many neighbors including residents of the Town of Falmouth, it came to our attention that a local property owner was illegally removing gravel from their property. Although this activity was shut down by the Town due to lack of required permits, imagine my horror when I reviewed the Zoning ordinance to find that the excavation of land is a permitted use in Zones RR1 and RR2. Specifically, the ordinance section I am referring to can be found on page 38 of the RR1 Zoning Ordinance, Section 204.1.1.1.13 "Excavation of land, subject to the provisions of Sec. 410", and on page 43 of the RR2 Zoning Ordinance, section 204.1.2.1.13.

Section 410, found on page 118 of the Zoning Ordinance, further defines the Excavation of Land to read "Excavation Of Earth Materials" as "top soil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this Ordinance only after the granting of a one year, annually renewable special permit for such operations as may be issued by the Board of Adjustment and Appeals and under such terms and conditions as may be approved and provided for by the Board and as provided for in this Ordinance". This section further defines the procedure and standard required for such an operation.

My reasons for asking that the Council to review the applicability of this permitted use are as follows:

- 1. The activity of removing or processing gravel materials is an Industrial Operation, not one conducive in a residential neighborhood. This is evidenced by the fact that the only Industrial Zone in the Town of Cumberland is located where the Town has an active gravel pit off Goose Pond Road in West Cumberland.*
- 2. The heavy dump truck traffic generated by this type of activity is a safety hazard for pedestrians, bike riders and vehicle traffic on our roads. This traffic is not confined within the gravel pit but for all roads in which dump trucks will be traveling to haul materials. We already have this heavy dump truck traffic operating out of another pit on Blackstrap and dump trucks are coming from across Cumberland via Tuttle, Skillings and Blanchard Roads, as well as from Gray, Falmouth and Windham via Blackstrap and*

Route 100. Public safety is being affected throughout our town currently as a result of existing gravel pit activities in West Cumberland, why would we want to introduce more?

- 3. The weight of these vehicles damage the roadways in which they travel. The recent illegal gravel extraction was traveling on Upper Methodist Road and Blackstrap Road. Upper Methodist is not built for heavy vehicle use and we already know that the road conditions on Blackstrap are dangerous, hence the recent request to the State to reduce the speed limit on Blackstrap. Blanchard, Skillin, Tuttle, and a section of Route 100 were recently rebuilt or repaved and I am sure the lifespan estimated for these did not contemplate increased heavy vehicle use and the road breakdown it causes.*
- 4. The noise pollution caused by this type of operation is not what one would expect to have to endure in a residential zone. The constant “beep, beeping of vehicle backing up to be loaded, as well as the noise of the dumping of materials and from the equipment being used is loud. The recent situation came to light as a result of two of the local residents, who work night shift, could not sleep because of the noise of the gravel extraction operation.*
- 5. As a taxpayer, paying the same tax rate of \$15.30 as all other residential households, we should have a reasonable expectation to be able to live in a residential setting without being subjected daily to Industrial activity in our back yards. This activity affects our quality of life, as well as would immediately negatively affect the value of our homes.*

In addition, I would request that the Council review the following permitted use found as 204.1.1.1.23 in RR 1, 204.1.2.1.14 in RR2 and 204.2.1..17 in LDR as defined as “Extraction and/or bulk storage of ground or spring water, subject to the provisions of Section 430”. Section 430, found on page 163 in the Zoning Ordinance further defines Water Extraction and Storage as “ground water or spring water may be pumped, extracted and/or bulk stored for wholesale commercial purposes at locations where permitted under this ordinance, subject to the approval of the Board of Adjustment and Appeals.”

This type of Industrial activity is very similar to excavation of earth materials in the type of equipment used, noise pollution it causes, and damage caused to our road infrastructures due to heavy trucks that would travel over our roads. In addition, this ordinance does not appear to support our 2009 Comprehensive Plan Sustainability Goals and Actions, Goal #11 on page 178 of the Comprehensive Plan which states “conserve water resources/protect aquifer” Action: consider adopting an ordinance that regulate or restricts the extraction of water for commercial purposes”. Lastly, there is already a Well Advisory Zone in existence in West Cumberland which was established in 1992. This Advisory was issued as a result of persistent low level contamination in wells on part of Blackstrap Road and Upper Methodist Road. To me, this is even more reason for the Town to protect our groundwater resources for the future use of its residences and not for a commercial business to come in, extract and sell for profit.

For all of these reasons I am asking that the Council review these permitted use business activities for applicability in the residential zones. I know I am not the only residential homeowner concerned about an industrial business moving in next door, so I need to encourage any citizen who is watching and lives in the RR1, RR2 or LDR zones to contact a member of the Town Council and express your thoughts and concerns and support the review of these ordinances. Thank you.

Councilor Moriarty acknowledged that this is an important and far reaching point. In order to approach this properly and systematically, the Council would need a workshop to re-educate themselves on when the current provisions were adopted, what the definitions are, what other restrictions, if any, may apply. There needs to be a lot of information gathered before a meaningful workshop can take place. This is a far too complex issue to simply turn it over to the Planning Board without lengthy discussions by the Council first.

Town Manager Shane suggested sending this issue to the Ordinance Committee to flush out some of the details and come up with a plan of action. There is some sense of urgency because the applicant is attending a pre-application meeting with Town staff tomorrow to discuss permitting a gravel pit on the site that Mrs. Maloney-Kelly spoke of.

Councilor Moriarty asked Town Manager, when the application is filed, are the applicants rights secured with respect to the zoning that is in existence at that moment.

Town Manager Shane responded that is the difficult piece and he will seek clarification from the Town Attorney. Putting a moratorium on gravel pits and water extraction affects both parties. If one party feels their land rights have been taken away, that should be considered as well.

Councilor Porter pointed out that “it is totally appropriate and there is nothing that stops this Council from passing a moratorium if they wish to”. If this is what the Council has to do in order to allow enough time to have an intelligent discussion about this issue, he has no problem doing that.

Chairman Storey-King said that she attended every Comprehensive Plan meeting. From these meetings, it was determined that Cumberland Center sits on one of the largest and best aquifers, maybe in the entire state. This is why there was so much discussion regarding the protection of these aquifers in the Comp Plan meetings.



IV. LEGISLATION AND POLICY

10 – 138 To hear a report from the Town Clerk re: absentee voting.

Chairman Storey-King introduced Town Clerk, Tammy O'Donnell.

Ms. O'Donnell said that it is still early in the election process, and as of today, 321 absentee ballots have been mailed to voters and 98 have been returned. She anticipates the voter turnout to be very high.

Ms. O'Donnell reviewed the following information with the Council:

NOVEMBER 2, 2010 GENERAL AND REFERENDUM ELECTION	
	
ABSENTEE HOURS	
• MON.-WED. 8:00 a.m.- 5:00 p.m. • THURS. 8:00 a.m.- 6:00 p.m.	
Extended hours starting Saturday October 16, 2010 9 a.m. – 12:00 p.m. (Town Hall) October 23, 2010 – 9 a.m. – 12:00 p.m. (Town Hall) October 30, 2010 – 9 a.m. – 12:00 p.m. (Town Hall) October 31, 2010 – 9:00 a.m. – 12:00 p.m. (West Cumberland Recreational Hall)	

VOTER REGISTRATION

- Beginning Tuesday, October 19, 2010, a new voter registration must occur in person. The voter is required to show satisfactory proof of identity and residency to the Registrar. The regular office hours of the Voter Registrar/Town Clerk's Office are:
 - Monday-Wednesday 8:00 a.m. – 5:00 p.m.
 - Thursday 8:00 a.m. – 6:00 p.m.
- We will be open until 7:00 p.m. on Thursday, October 28, 2010.

INTERESTING STATE STATISTICS

- In the November 2008/November 2009 State elections,
 - there were 300 sets of potential duplicate voters.
- The Secretary of State's Office working along with the Town and City Clerk's in the State, determined that only 10 of the 300 potential sets were possible instances of voter fraud. Those 10 cases were turned over to the Attorney General's Office. Only two of the ten possible cases were determined to be actual instances of possible voter fraud. One of the two has been prosecuted, the second has been indicted by the Grand Jury.

YOUR VOTE COUNTS

- You may go to www.maine.gov to apply for an absentee ballot. It will automatically send your application to your home town as entered by you.
- You may go to www.cumberlandmaine.com and download and application as well. You may either mail it in or come in and pick up your ballot in person with your application.

Town Manager Shane reported that two great things are happening on Election Day: There will be a donation booth set up for the Veterans Monument fund, and we will be collecting non-perishable food for the food pantry in Cumberland. Our goal is to fill 20 shopping carts with food.

10 – 139 To hear a report from the Town Manager re: intersection improvements at Hallmark Road, Carriage Road, and Heritage Lane.

Town Manager Shane said that at the last meeting, Councilor Turner asked that he investigate to determine if a 3-way stop at this intersection was necessary. The police department reported no issues with the intersection and felt that a 3-way stop was not warranted. The Manager recommended setting a Public Hearing for November 8th and surveying the neighborhood to see if a 3-way stop is supported.

Councilor Turner said that the issue was brought to his attention by a neighbor. It is a long straightaway and young drivers can get up to 40 mph along it. There are small children in that area and anything to slow down vehicles would help. This is a potential safety issue that should be addressed.

Councilor Porter said that with all due respect to Councilor Turner and the resident who brought this issue to his attention, if we use this standard we will have dozens of stop signs all over Town. He feels that this is a “political sign”. It is a legitimate request that any resident can make, but he does not see it as a traffic necessity.

Motion by Councilor Stiles, seconded by Councilor Turner, to set a Public Hearing date of November 8th to consider and act on a 3-way stop at the intersection of Hallmark Road and Carriage Road.

VOTE: 6-1 (Porter opposed) PASSAGE

10 – 140 To consider and act on authorizing the Town Manager to execute a change order to remove 500’ of concrete slab on Route 88 near Tuttle Road.

Town Manager Shane explained that there is a section of Route 88, just south of Tuttle Road that does not have sufficient road base, causing the concrete slabs to rise with frost cycles. Simply adding drainage will not remedy the problem. Engineers and Town Staff have met and come up with a plan to remove all the concrete, put in a sufficient gravel base, and replace that 500’ section of road. The cost is approximately \$82,600. The savings to date on the project exceeds \$113,000. If this change order is approved, there will still be a net savings on the project. Storey Brothers has done an outstanding job on this project and he does not foresee any problems going forward.

Chairman Storey-King said that to the Manager’s credit, he could approve this change order without Council authorization, but it is “our effort and desire to keep this a transparent project and let the public know that we do know what is going on with this project.”

Motion by Councilor Copp, seconded by Councilor Moriarty, to authorize the Town Manager to execute change order to remove 500’ of concrete slab on Route 88 near Tuttle Road.

VOTE: 7-0 UNANIMOUS PASSAGE

10 – 141 To set a Public Hearing date (October 25th) to consider and act on authorizing the Town Manager to execute agreements with North Yarmouth for Animal Control Officer, Sidewalk Snow Plowing & Channel 2.

Town Manager Shane explained that staff is recommending October 25th for the Public Hearing. There will be a Council workshop after tonight’s meeting to discuss the agreements.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to set a Public Hearing date of October 25th to consider and act on authorizing the Town Manager to execute agreements with North Yarmouth for Animal Control Officer, Sidewalk Snow Plowing, & Channel 2.

VOTE: 7-0 UNANIMOUS PASSAGE

10 – 142 To set a Public Hearing date (October 25th) to consider and act on an Automobile Recycling Permit for Copp Motors for the period of October 1, 2010 – October 31, 2015.

Town Manager Shane explained that this is an administrative matter. The Council has to approve Automobile Recycling Permits every 5 years and staff is recommending October 25th as the Public Hearing date.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to set a Public Hearing date of October 25th to consider and act on an Automobile Recycling Permit for Copp Motors for the period of October 1, 2010 – October 31, 2015.

VOTE: 6-0-1 (Copp abstained)

PASSAGE

10 – 143 To hold a Public Hearing to consider and act on amendments to the Cumberland Mass Gathering Ordinance re: insurance. TABLED ON 9/22/10

Motion by Councilor Copp, seconded by Councilor Stiles to remove this item from the table.

VOTE: 7-0 UNANIMOUS PASSAGE

Councilor Stiles explained that he had concerns with the original amendment wording regarding the control that the Town had and the insurance limits for the applicants. He, Town Manager Shane, and Finance Director, Alex Kimball met with the Town insurance agent to discuss this matter and clean up the language. There will be a one-million dollar per occurrence requirement, with the Town named as additionally insured, only when an event is on Town owned property. The Town Council should review and have the ability to modify any and all the insurance requirements. The new language is a lot cleaner and most applicants will be able to comply.

Motion by Councilor Copp, seconded by Councilor Turner to delete Section II, F (Performance Guaranty) of the Cumberland Mass Gathering Ordinance and replace it with new F (Insurance).

VOTE: 7-0 UNANIMOUS PASSAGE

10 – 144 To hear a report from the Finance Committee Chair re: FY'11 1st quarter financials.

Finance Director Alex Kimball reviewed the following for the Council:



TOWN OF CUMBERLAND YEAR-TO-DATE BUDGET REPORT Through September 30, 2010				
Department	Budget	2010-11		2009-10
		YTD Expenses	Used	Used
General Administration	\$ 1,078,436	\$ 322,043	29.9%	31.8%
Public Safety	\$ 1,792,273	\$ 487,583	27.2%	28.5%
Public Works	\$ 1,626,002	\$ 349,986	21.5%	23.4%
Parks & Recreation	\$ 624,231	\$ 271,791	43.5%	43.8%
Library	\$ 353,580	\$ 91,309	25.8%	29.0%
Other Expenses	\$ 303,049	\$ 68,434	22.6%	26.6%
Controllable Expense Total	\$ 5,777,571	\$ 1,591,147	27.5%	29.3%
Other Expenses	Budget	2010-11		2009-10
		YTD Expenses	Used	Used
MSAD #51	\$ 11,830,338	\$ 2,953,284	25.0%	24.9%
Debt Service	\$ 998,578	\$ 183,274	18.4%	25.6%
County Tax	\$ 600,901	\$ 600,901	100.0%	100.0%
Cemetery Association	\$ 22,000	\$ 24,112	109.6%	100.0%
Capital Imp. Plan	\$ 333,485	\$ 333,485	100.0%	100.0%
Insurance	\$ 254,252	\$ 121,520	47.8%	59.8%
Other Expense Total	\$ 14,039,554	\$ 4,216,576	30.0%	32.3%
All Expenses Total	\$ 19,817,125	\$ 5,807,722	29.3%	31.4%

Revenues Through 9/30/10				
Description	Budget	2010-2011 Actual	Percent Collected	2009-10 %
Misc Revenues	\$2,418,786	\$ 611,760	25.3%	23.6%
Dept Revenues	\$1,076,747	\$ 102,300	9.5%	8.8%
Total Revenues	\$3,495,533	\$ 714,061	20.4%	19.4%

Selected Revenue Lines	Budget	Actual	10-11	09-10
Excise Tax	\$1,330,446	\$ 399,530	30%	30%
Building Permits	\$ 35,000	\$ 11,281	32%	30%
State Revenue Sharing	\$ 500,000	\$ 134,746	27%	23%
Fall Recreation	\$ 41,000	\$ 30,228	74%	74%
Bags/Universal Waste	\$ 325,000	\$ 17,449	5%	2%

Property Tax Collections through 9/30			
	2008-09	2009-10	2010-11
Tax Commitment	\$ 15,901,519	\$ 16,612,279	\$ 17,647,491
Taxes Collected	\$ 7,592,312	\$ 7,795,015	\$ 8,378,960
Percent Collected	47.75%	46.92%	47.48%
% Difference		-0.82%	0.56%
\$\$ Difference		\$ (136,655)	\$ 98,190

Unpaid Taxes at key intervals				
	End of Year	As of Sept 30	One year later	After Foreclosure
06-07 Taxes unpaid	\$ 236,711	\$ 148,868	\$ 58,103	\$ 9,011
07-08 Taxes unpaid	\$ 294,768	\$ 152,742	\$ 94,893	\$ 24,049
08-09 Taxes unpaid	\$ 313,269	\$ 276,962	\$116,164	N/A
09-10 Taxes unpaid	\$ 271,596	\$ 214,700	N/A	N/A

V. NEW BUSINESS

Councilor Turner – None

Councilor Copp – The Credit Union on Main Street looks great. The grass and landscaping are complete. They have done a phenomenal job.

Councilor Porter – None

Councilor Perfetti – None

Chairman Storey-King – This weekend is homecoming weekend. She invited the entire public to attend the Greely/Cape Elizabeth football game Friday night.

There is a Cumberland Maine Business Association meeting on October 27th for Cumberland business owners who may be interested in attending.

Councilor Stiles – Asked the Manager about the status of the Range Road paving, Route 100 water main project, and the open house at the Fire Department.

Town Manager Shane responded that Range Road paving is scheduled to happen this week, depending on weather. The Route 100 water main project is also scheduled to begin this week. There was a delay in getting approvals from the Portland Water District. Those approvals are now in hand and materials have been delivered to the site. The open house at the Fire Department was a success and well attended.

Councilor Moriarty – Agreed with the Councilor Copp regarding the Credit Union, it looks very nice. He asked the Manager when it was scheduled to open.

Town Manager Shane said that the opening is scheduled for late October, early November.

Town Manager Shane – The Twin Brook Committee has requested to meet with the Council in workshop to discuss insurance requirements and use fees. The workshop will take place on November 8th at 6:00.

Atlantic Regional Credit Union will be holding office hours at Town Hall to serve the public with opening new accounts.

Bulky Waste week starts next week. Put your items curbside on your regular trash day. Computers and TV's will not be accepted, but Goodwill Industries accepts these items and will recycle them.

VI. EXECUTIVE SESSION II: pursuant to Title 36 M.R.S.A., § 841, re: Property Tax Abatement Request for property identified as Map U19/Lot 6A.

Motion by Councilor Perfetti, seconded by Councilor Copp, to recess to Executive Session pursuant to Title 36 M.R.S.A., § 841, re: Property Tax Abatement Request for property identified as Map U19/Lot 6A.

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 8:26 P.M.

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

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 8:38 P.M.

Motion by Councilor Perfetti, seconded by Councilor Copp, to deny the Property Tax Abatement Request for property identified as Map U19/Lot 19A.

VOTE: 7-0 UNANIMOUS PASSAGE

VII. ADJOURNMENT

Motion by Councilor Copp, seconded by Councilor Turner, to adjourn to Workshop.

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 8:41 P.M.

WORKSHOP re: Review of agreements with North Yarmouth (Animal Control Officer, Sidewalk Snow Plowing & Channel 2).

Respectfully submitted by,

Brenda L. Moore
Council Secretary