

# MINUTES

Cumberland Town Council Meeting  
Town Council Chambers

**MONDAY, FEBRUARY 28, 2011**

**6:00 P.M. Workshop** with Town Center Advisory Committee Liaisons

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

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

## **I. APPROVAL OF MINUTES**

February 14, 2011

Motion by Councilor Stiles, seconded by Councilor Copp, to accept the minutes as presented with one spelling correction.

VOTE: 5-0-2 (Moriarty & Porter abstained)                      MOTION PASSED

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

Some good news received today, the Town's bond rating went from AA- (which has been the rating for the past 20 years) to AA. This is no small task, especially in this economic climate. Typically, Standard & Poore will look at the financial capacity of towns for bond holders and future bond ratings. We are now one of the top ten communities in the entire state from a financial capacity. The Manager said that he is extremely proud of Finance Director, Alex Kimball.

Town Clerk, Tammy O'Donnell explained that nomination papers will be available on March 21<sup>st</sup> for the June 14, 2011 Municipal Election. There is one At-Large Town Council seat, one Cumberland Center Town Council seat, and two M.S.A.D. 51 Board of Director seats available. Nomination papers are required to be available 85 days prior to the election and 25 – 100 registered voter signatures are needed.

Town Clerk O'Donnell explained that she met with Recreation Program Director, Peter Bingham to outline the upcoming Twin Brook events to be included in a blanket Mass Gathering Permit. The list of events will be posted on the town website for the public to refer to.

## **III. PUBLIC DISCUSSION**

None

## **IV. LEGISLATION AND POLICY**

**11 – 022 To hold a Public Hearing to consider and act on a Mass Gathering Permit for a Boys Youth Lacrosse Jamboree to be held at Twin Brook on May 7, 2011.**

Town Manager Shane said that the Lacrosse Boosters have always been great to work with. Representatives from the booster clubs are here to answer any questions. Staff is recommending approval. The Police Chief said that the event went very well last year and the traffic flow was so well organized, that there is no need for police coverage this year.

Public discussion:

None

Councilor Stiles made reference to the boosters club certificate of insurance which states that “coverage applies only to teams/leagues comprised of 100% US Lacrosse member participants during scheduled and supervised lacrosse activities.” He wants to confirm that all the teams that are playing are, in fact, US Lacrosse members.

Karyn Kurland, Girls Lacrosse Booster Club, said that all the players in the Cumberland Lacrosse League are US Lacrosse certified as are the other teams that play in the tournaments.

Motion by Councilor Stiles, seconded by Councilor Moriarty, to approve the Mass Gathering Permit for a Boys Youth Lacrosse Jamboree to be held at Twin Brook on May 7, 2011.

VOTE: 7-0 UNANIMOUS PASSAGE

**11 – 023 To hold a Public Hearing to consider and act on a Mass Gathering Permit for a Girls Lacrosse Round Robin to be held at Twin Brook on June 4, 2011.**

Public discussion:

None

Motion by Councilor Copp, seconded by Councilor Turner, to approve the Mass Gathering Permit for a Girls Lacrosse Round Robin to be held at Twin Brook on June 4, 2011.

VOTE: 7-0 UNANIMOUS PASSAGE

**11 - 024 To set a Public Hearing date (March 14<sup>th</sup>) to consider and act on a Victualer’s License application for the Cumberland/North Yarmouth Boys Youth Lacrosse, effective March 14, 2011 through June 30, 2011.**

Town Manager Shane said that staff is recommending March 14<sup>th</sup> as the Public Hearing date.

Motion by Councilor Porter, seconded by Councilor Perfetti, to set a Public Hearing date of March 14th to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Boys Youth Lacrosse, effective March 14, 2011 through June 30, 2011.

VOTE: 7-0 UNANIMOUS PASSAGE

**11 - 025 To set a Public Hearing date (March 14<sup>th</sup>) to consider and act on a Victualer’s License application for the Cumberland/North Yarmouth Girls Youth Lacrosse, effective March 14, 2011 through June 30, 2011.**

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date of March 14th to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Girls Youth Lacrosse, effective March 14, 2011 through June 30, 2011.

VOTE: 7-0 UNANIMOUS PASSAGE

**11 – 026 To hear a report and hold a Public Hearing to consider and act on sending to the Planning Board for a recommendation, amendments to Section 410 (Extraction of Earth Materials) and Section 430 (Water Extraction and Storage) of the Cumberland Zoning Ordinance.**

Councilor Moriarty explained that over the past two months, the ordinance committee met several times and recommended to the Town Council that the wholesale/commercial extraction and/or bulk storage of water be eliminated in the zones which it is currently permitted, and that earth extraction continued to be a permitted use in the three areas which it is allowed, but that as an extra protective measure, a contract zone must be developed with the Town in each instance.

Public discussion:

Teri Maloney-Kelly of West Cumberland read the following letter to the Council:

*I want to again thank the Council for your quick response to my inquiry to review the applicability of allowing water and earth material extraction in residential zones back in October. Steve, George, Mike, and Bill I want to thank you for all the hours spent in the subcommittee meetings gathering information and listening to resident concerns over the past few months.*

*Recognizing how precious water is as a natural resource, I am supportive of the subcommittee's recommendation to eliminate commercial water extraction from the Rural Residential zones. However, I am very surprised and confused why the rest of Mother Nature's resources such as our wildlife, birds, streams and brooks, wildlife habitat, tree cover and soils and minerals would not deserve the same protection.*

*These ordinances have been on our books for 50 years. 50 years ago the make-up of our town was very different, the stripping of natural resources from our lands was acceptable and industrial businesses co-existed within our small residential neighborhoods. Now fast forward 50 years to today. The Town now has a Comprehensive Plan as a reference document for conducting and guiding our Town's business into the future. Based on information contained within the 2009 Comprehensive Plan here are some of the highlights of how our Town has changed:*

- 1. "Cumberland has experienced rapid growth over the last 50 years. The total population of the town increased more than 2.5 times in the 50 years from 2,030 in 1950 to 7,400 in 2007.*
- 2. "The number of households in Cumberland increased between 1990 and 2000 by 527, a 26% increase over the last census period. This growth makes the Town one of the 4<sup>th</sup> fastest growing towns in Cumberland County. Historically the Town of Cumberland has had a larger average household size than the county and the state, suggesting it is of above average appeal as a community for families."*
- 3. "Based on 2000 Census data, income levels in Cumberland are well above that of the state and the county. Cumberland's median household income was 81% higher than the state's and 53% more than Cumberland County."*
- 4. "Cumberland has the 2<sup>nd</sup> highest median housing value in Cumberland County, 8<sup>th</sup> in the State, and housing prices rose 55% from 2000 to 2005." 96% of Cumberland's housing is comprised of high-priced, owner-occupied, single-family homes and the median value for a home in Cumberland is \$340,000.*

*Why are all these stats important? They document the changes in the economic make-up of our residents, the financial investment in new homes, and the attractiveness of our Town as a place to live over the past 50 years.*

*Industrial business activities such as water or gravel extraction for profit may have been acceptable back in 1950 but are not in today's world of environmental responsibility, sustainability, and protection. I ask that you remember your visual memory of the October site walk and recall the barren ground stripped of all the vegetation and wildlife that previously existed, the drained pond that previously sustained wildlife, water fowl, and fish, and ask if this is the type of new business activity we want to welcome in the Town of Cumberland, much less in residential neighborhoods. Unfortunately it does not appear that the majority of the TC feels the same need to protect our mineral resources or its residents who live in a residential zone, hence the lack of a recommendation to remove the mineral extraction from our residential zones. Because this ordinance applies to 80% of the residents of our Town, a grass roots organization has been formed called the Cumberland Environmental Action Network or CLEAN. It is the intent of this citizen group to gather signatures to bring the gravel extraction ordinance to referendum so it can be removed from all rural residential zones. Although the immediate threat to our neighborhood may disappear as the property owner is looking at another use for this property, no residential neighborhood in our Town should have to fight this fight so we are going to proceed to bring this issue to referendum. To the citizens of the Town of Cumberland we need your help by signing this petition so you can vote in June to decide if you want the potential of an industrial gravel pit in your neighborhood. Remember, 80% of the taxpayers in this town have the potential to have a gravel pit as your neighbor. Please contact us via [www.cleancumberland.org](http://www.cleancumberland.org) and help us protect the future of the residential nature of your neighborhood, as well as Mother Nature's resources.*

Bert Kendall, Glenview Road, voiced his support for water extraction. From 2005 – 2007, Mr. Kendall was the Town Manager of Denmark, whose largest taxpayer was Poland Spring Water Company. During that time, he quickly learned a lot about water extraction. Water extraction can be very tightly controlled by municipal ordinance, as has been done in many towns. Anytime we can get tax revenue in our Town from a clean industry that has no downside that he is aware of, we should have some interest in that. The local ordinance gives the Town control over pumping, a test/monitoring site, and the ability to shut down in the event of drought, etc. It can be very lucrative in terms of the fee the Town can charge, as well as tax revenue. The amount of water pumped by all the water companies in the entire State of Maine is less than the evaporation of Sebago Lake in the month of July. Mr. Kendall said that he hopes that a good business proposition such as water extraction is not thrown out simply because it is politically unpopular.

Motion by Councilor Moriarty, seconded by Councilor Turner, to refer to the Planning Board the issue of whether Section 430 of the Cumberland Zoning Ordinance ought to be amended to abolish the wholesale/commercial extraction and/or bulk storage of water in existing zones to exclude Municipal or Quasi-Municipal extraction of water.

VOTE: 6-1 (Porter opposed)

Councilor Porter pointed out that the vote on this item has no bearing on whether any member of the Council supports this ordinance or doesn't support it. All that is being done at this time is forwarding it to the Planning Board for their recommendation.

Town Manager Shane said that with any ordinance change, the ordinance sub-committee works through the issues and will attend the Planning Board meeting and provide the Planning Board members with the background on the issue.

Motion by Councilor Moriarty, seconded by Councilor Turner, to send to the Planning Board for its recommendation, possible amendments to Section 410 of the Cumberland Zoning Ordinance regarding earth extraction, specifically to consider the addition of a contract zone requirement to existing criteria for review and approval.

VOTE: 6-1 (Porter opposed)

Town Manager Shane explained that the difficult part of this issue is that this will be back from the Planning Board in April. He anticipates the signatures on the petition will be turned in at that point. The Council Liaison to the Planning Board may request that it be tabled pending voter reaction in June. He thanked Teri Maloney-Kelly for working with him on this. There are a lot of unintended consequences when a use is eliminated because there are other uses that may be related that are not intended to get tangled in the same net.

Kathy Lynch, Blackstrap Road, asked why nothing has ever been mentioned regarding all the rules that were broken and caused this situation. She is referring to clear cutting without a permit, water extraction of water without a permit, and earth extraction without a permit. It makes her angry that this has never even been mentioned. She urged the residents to visit [www.cleancumberland.org](http://www.cleancumberland.org) and view the photos.

Town Manager Shane explained that when the Town was notified, we immediately contacted the DEP and they been involved since the first allegations were brought forward. The Copp's are in the process of working with the DEP on a mitigation plan. The Manager assured Mrs. Lynch that the Code Enforcement Officer has been in communication with the Copp's and the DEP through the entire process.

Councilor Moriarty added that there have been two Town issued stop work orders and two DEP violations.

Randy Copp said that he did have a forestry permit and the Forestry Service has been on site. Every piece of wood that has come off the property has been accounted for. To date, the Copp's have all the required DEP permits, and any future development will require additional permits, which they will obtain. Mr. Copp said that they were doing what the ordinance allows. He had no knowledge that he was in violation until he was told to stop. The first thing he did was to go to the DEP with a proposal and asked what permits were required. He wants everyone to know that there was no attempt to hide anything from anyone.

Robert Maloney, West Cumberland, asked Mr. Copp if it is accurate that the Town permit for the clear cutting were applied for after the trees were already cut and added that the building that is on the site does not conform to the Town's regulations.

Town Manager Shane confirmed that both these points are true.

Town Manager Shane said that Mr. Copp approached the Town regarding putting a house at the end of the road that he constructed (without a permit). The ordinance allows for excavation and extraction for the construction of a home, not a half mile away, and not with screeners and excavators. That was a clear circumvention of the rules and that is why the Town stopped him.

Joyce Vaughan of Blackstrap Road asked what the allowed use would be for a gravel pit, if the referendum fails. She wants to be sure that aggregate processing will not be an allowed use.

Councilor Moriarty responded that, in his personal opinion, if extraction was allowed, aggregate processing and construction activities would not be supported as a use in this zone.

Town Manager Shane pointed out that most subdivision plans allow for aggregate processing onsite. Typically, the materials are used to build roads and infrastructure within the subdivision. That could be allowed with any subdivision or site plan because it's in a short duration and it's bonded.

**11 – 027 To hear a report from the Town Manager re: FY'12 Budget and to set Saturday, March 5, 2011 as the Town Council FY'12 Budget Workshop date from 8:00 a.m. to noon or completion.**

Town Manager Shane explained that there will be no increase in the municipal budget from the current year to July 1<sup>st</sup> of next year. There is a reduction of approximately \$19,000 in the current budget going forward. Over the past 5 years, municipal spending has decreased over \$850,000 due to the following:

- a reduction in trash contracts with EcoMaine
- the departure of the Town Clerk/HR Director (that position was not replaced)
- a front counter clerk position is vacant and not replaced
- increase in employee paid health insurance premium to 20%
- switched to a higher deductible health plan

This year, utility costs will increase by 10% and employee wages increase by 2%. Last week, we received the projection for the State Revenue Sharing and it was up by \$270,000 over this year. Unfortunately, under the Governor's new plan, we won't receive that amount. We will receive approximately \$560,000 instead of the \$820,000 expected. If we had received that amount, we would have been able to do a lot more with infrastructure and road paving. The Manager said that he is very proud of the effort put into the budget this year by Department Heads.

In regard to an increase in the mil rate, we are waiting for the school to get through their budget process. Over the last three years, the school operating budget has been at zero, but the loss of revenue from the State left a very large hole that the taxpayers have had to make up. A 2.5 – 4.5% increase in the mil rate is predicted, but none of that is coming from the Town side.

Motion by Councilor Turner, seconded by Councilor Stiles, to set Saturday, March 5, 2011 as the Town Council FY'12 Budget Workshop date from 8:00 a.m. to noon or completion.

VOTE: 7-0 UNANIMOUS PASSAGE

**11 – 028 To set a Public Hearing date (March 14<sup>th</sup>) to consider and act on adoption of the FY'12 Municipal Budget.**

Motion by Councilor Stiles, seconded by Councilor Copp, to set a Public Hearing date of March 14th to consider and act on adoption of the FY'12 Municipal Budget.

VOTE: 7-0 UNANIMOUS PASSAGE

**11 – 029 To set a Public Hearing date (March 14<sup>th</sup>) to authorize the Town Manager to enter into an agreement with the “First Tee” Program.**

Town Manager Shane explained that this exciting program has national recognition and introduces young people to golf. We currently have the largest junior golf program in the state with over 400 junior golfers. This will enhance our program as well as open up funding programs. Brian Bickford has done an outstanding job with the kids at Val Halla. It is exciting to see so much enthusiasm on the golf course.

Motion by Councilor Moriarty, seconded by Councilor Turner, to set a Public Hearing date of March 14<sup>th</sup> to authorize the Town Manager to enter into an agreement with the “First Tee” Program.

VOTE: 7-0

UNANIMOUS PASSAGE

**V. NEW BUSINESS**

**Councilor Turner** – there is a Public Hearing tomorrow in Augusta re: the proposed State Revenue Sharing cuts at 1:00 p.m. in room 228 of the State House. He suggested that any member of the public that is interested should attend and give their opinion.

**Councilor Copp** – last week, he received an e-mail from a resident who praised the Town Manager. What this resident recognized in the Manager is something that the Council members see every day. Thank you for the kind words and we appreciate him as much as that resident does.

**Councilor Porter** – received a letter from Lou Snow re: the budget. He responded back to Mr. Snow and encouraged him to get involved in the budget process.

**Councilor Perfetti** – received a phone call from a resident who is interested in the possibility of partnering with the developer of the Doane Property to include a Habitat House. He advised her that the next opportunity to be heard on this will be at the Planning Board meeting. He encouraged the Council to keep an open mind to the possibility of a Habitat House as part of this project.

**Chairman Storey-King** – referred to a thank you note from a resident who is appreciative of the Senior Circuit Breaker program.

Last week, she put out a special edition of the Cumberland Crier updating residents as to what has been happening with the Doane Property. She asked the Town Manager to post both the letters that she wrote in regard to the Doane Property on the Town’s website.

**Councilor Stiles** – the heavy limit truck signs are posted. The purpose of the road posting is to protect the roads from being broken up by heavy vehicles.

**Councilor Moriarty** – received the same phone call as Councilor Perfetti re: an affordable housing option on the Doane Property. He suspects that this will be discussed further when this item comes back to the Council.

His mailbox almost made it to the end of February, but not quite.

**Town Manager Shane** – the Contract Zone Agreement for Phase I of the Doane Property has been sent to the Planning Board. There may be opportunities in the remainder of the parcel to weave in some

Habitat houses, but the Planning Board is looking at the Phase I proposal that the Council forwarded to them and a Habitat house is not part of that.

The Twin Brook committee is meeting tomorrow evening and a community garden will be discussed. There are some residents who are actively pursuing the possibility of a community garden and Twin Brook offers a host of opportunities from access to water, parking, open areas, which make it conducive. The Town's DEP permit would have to be amended, and the Planning Board would have to authorize an amendment to the site plan. These are both very simple, administrative matters to take care of.

**VI. EXECUTIVE SESSION** pursuant to 1 M.R.S.A., § 405 (6)(C) re: real property and § 405 (6)(A) re: Town Manager evaluation.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to recess to Executive Session pursuant to 1 M.R.S.A., § 405 (6)(C) re: real property and § 405 (6)(A) re: Town Manager evaluation.

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 8:30 p.m.

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

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 9:52 p.m.

Motion by Councilor Perfetti, seconded by Councilor Turner to authorize the Town Manager to amend the Purchase and Sale Agreement for the sale of the banquet center at Val Halla.

VOTE: 7-0 UNANIMOUS PASSAGE

**VII. ADJOURNMENT**

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

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 9:55 p.m.

Respectfully submitted by,

Brenda L. Moore  
Council Secretary