

# MINUTES

Cumberland Town Council Meeting  
Town Council Chambers

**MONDAY, JANUARY 24, 2011**

**6:00 P.M. WORKSHOP** with the Village Center Committee Council Liaisons

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

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

## **I. APPROVAL OF MINUTES**

January 10, 2011

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

VOTE: 7-0 UNANIMOUS PASSAGE

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

Thank you to the Public Works Department for their outstanding work plowing & clearing snow. They are currently working on pushing back snow in intersections to increase visibility.

Many residents have been clearing snow around fire hydrants themselves. Thank you, this is a huge help and very much appreciated.

Request for proposals for services at the Viking Grill have been sent out and there are 4 interested parties. A recommendation should be before the Council by the end of February.

## **III. PUBLIC DISCUSSION**

None

## **IV. LEGISLATION AND POLICY**

### **11 – 010 To hear a report from the Ordinance Sub-Committee and John Sevee, of Sevee Maher Engineers re: gravel and water extraction moratorium.**

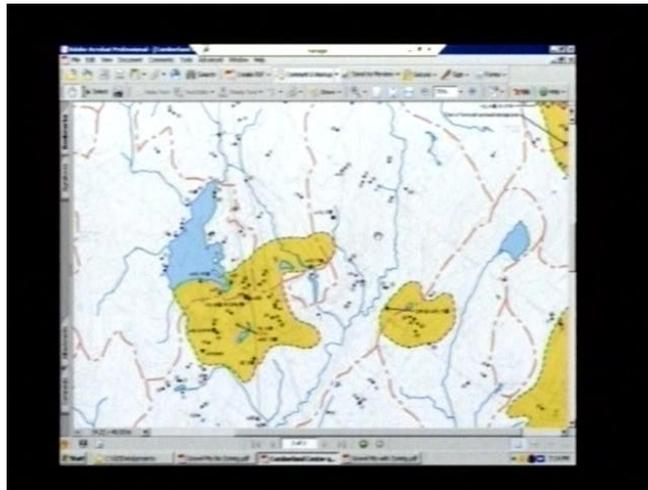
Councilor Moriarty explained that the Ordinance Sub-committee consists of himself, Councilor Perfetti & Councilor Turner. The committee has met 5 times between November 15<sup>th</sup> and January 11<sup>th</sup> with a lot of public participation. The committee has discussed both water extraction and earth excavation and is prepared to make suggestions to the Council this evening. The committee feels that they have gone as far as they can and are ready for input from the remaining Council.

Councilor Moriarty introduced John Sevee, of Sevee & Maher Engineers, to give a brief overview of the geology, aquifers, sand and gravel formations, water recharge, and answer any questions that the Council or members of the public may have.

Mr. Sevee explained that his professional specialty is ground water and he will cover the same items that he covered at the Ordinance Sub-committee meeting that he attended.

- A bedrock formation that is highly fractured and has a lot of recharge is an aquifer.
- A bedrock formation with no fractures and no precipitation is not an aquifer.
- An aquifer is something that provides usable quantities of water.

- There are two basic types of aquifers in Cumberland:
  - 1) Sand and gravel formation aquifers are only in portions of the town. These aquifers are formed in very specific geologic environments and as a result, they are not everywhere. In Cumberland, there are three generalized sand and gravel aquifers: one is near Greely Road and Route 9, one is near the fairgrounds, and one is in West Cumberland. They are known to be located there, but their precise delineation and distribution is not well known.
  - 2) Bedrock underlays the entire town. All the bedrock is fractured to varying degrees and all those fractures contain water enough for domestic uses.



- Only a fraction of precipitation makes it down to the ground water table.
- Sand and gravel aquifers are important because their coarse texture allows a significant portion of the rainfall to migrate into the ground and recharge that aquifer.
- Only about 10% of the land surface in Cumberland has sand and gravel exposed at the surface, yet because of its characteristics, 50% of the ground water that is recharged comes from that 10% of the land surface. This illustrates the importance of these formations as a resource, and it is a renewable resource under normal, natural conditions.
- Where does the water go once it gets into these formations:
  - Approximately 8 million gallons per day get into the sand and gravel aquifers. It can enter the deeper bedrock and migrate its way to the ocean. It is a negligible amount of water that actually makes its way to the ocean. The remainder of the water makes its way to streams, rivers, and brooks. This pathway is important as it supports the ecology of the streams, rivers, and brooks especially in the summer months.
- To illustrate the amount of water that goes into the aquifers, if every bit of water could be used in the Town of Cumberland that goes into the aquifers, over one million people could be supplied their daily water needs, forever. Therefore, looking forward, there may be a time when that resource becomes very important for the Town. If the cost of water from Sebago Lake becomes so expensive, it may be desirable to the Town to utilize these aquifers as a water resource in the future.
- Sand and gravel formations have a number of potential uses; you can build on them, you can extract water from them, because of their high permeability and their filtration capacity, you can use them for wastewater disposal, and you can use them to extract sand and gravel for construction. These uses are not necessarily compatible with each other. A development could be built on a sand and gravel formation with leach fields, done in such a way that it does not contaminate the water. On the other hand, if you do not have

control of those formations and a contaminate was leaked into the formation, that would destroy the entire aquifer for a long period of time. An example of this occurred in Gray in the late 1960's early 70's and after 26 million dollars of remediation, the contaminants are still there and will be there for many more generations.

Councilor Moriarty asked Mr. Sevee to talk about the impact to gravel extraction in a sand and gravel extraction, how deep can one dig, how much can you take, and what risks are acceptable without jeopardizing the formation.

Mr. Sevee responded that the DEP allows for the extraction of sand and gravel down to within 5 feet of the wet season water table. That 5-foot separation allows a small buffer against adversely affecting the chemistry of the formation. A larger than 5' buffer is better in preventing any liquids that may leak from equipment seeping into the water table. Those leaks will immediately move through the soil profile and reach the water table within hours or days, depending how big or small the buffer is.

Councilor Turner said that any spill whatsoever is unacceptable and asked Mr. Sevee that if there were a spill, what would the cost be to clean it up.

Mr. Sevee responded that a small spill that doesn't make it to the water table would cost tens of thousands of dollars to clean up. A major catastrophic spill that makes its way to the water table could potentially cost tens of millions of dollars to clean up.

Public Discussion:

Eileen Beesley of Falmouth asked the Council to please consider their neighbors in their decision. Their wells also count and they are only a line on the map away. Her concern is enforcement. Who is going to monitor and enforce if an accident happens? Should test wells be required within the perimeter?

Mr. Sevee responded that he has seen it required in other locations that monitoring wells are installed around the perimeter of the quarry, and testing focuses on the chemicals of concern (gasoline type products).

Councilor Moriarty explained that the Ordinance Sub-committee began by reviewing the water extraction issue. He emphasized that the wholesale/commercial extraction and/or bulk storage of water, is currently allowed in 5 Cumberland zones (RR1, RR2, LDR, MDR, and VMDR). Water extraction is currently controlled by Section 430 of the Zoning Ordinance. The Comprehensive Plan Committee advised the Council to reassess its view on the wholesale/commercial water extraction. After much consideration by the committee, they are recommending to the Council that the wholesale/commercial extraction of water be abolished as a permitted use throughout the entire Town, except for municipal or quasi-municipal purposes.

Councilor Turner said that this decision was unanimous among the Ordinance Sub-committee and after listening to Mr. Sevee this evening, it becomes more obvious that it is the correct approach to take. It is an issue of balancing risk against a huge asset.

Councilor Moriarty went on to explain that the Sub-committee then took on the task of looking at the earth excavation provisions of the current zoning ordinance. Earth extraction is currently allowed in three zones (RR1, RR2, and Industrial Zone) making up over 80% of the Town. This has been a permitted use for over 50 years. In those past 50 years, there have been many

Comprehensive Plan Committees who have never raised this as an issue to the Council. Randy Copp did not approach the Town and ask us to change anything that was not in effect, but rather he sought to do something that the Town does permit and has permitted for 50 years. The Ordinance Sub-committee looked at the current restrictions of earth extractions and there are primarily two: Section 410, which states that a permit can be granted initially for a term of one year, and then only one year at a time until there have been five consecutive years with no problems reported. At that point, a permit can be issued for 5 year periods. The ordinance provides for a 200-foot buffer to adjacent properties, and one can excavate within 5-feet of the ground water table. There is also a provision for a surety bond to the Town. In addition, the site plan ordinance also applies, which contains a list of 26 criteria that have to be satisfied during site plan review. Some of the criteria that would apply are storm water management, erosion control, sewerage disposal, ground water protection, exterior lighting, buffering, noise, material storage, landscaping, and aquifer protection. There are currently two fairly thorough and detailed protective mechanisms on the books before an earth extraction activity can be commenced. Councilor Moriarty said that the committee struggled with this issue for the reasons described, and have come up with the following suggestion: that earth extraction continued to be permitted in the areas which it is currently allowed, but in addition to the above protective measures described, an additional requirement be added that any activity can only be permitted through the Contract Zone process outlined in the Zoning Ordinance. While the current zoning allows the excavation of earth materials, it does not allow processing or crushing of earth materials, or any similar activity. There is a use in the Zoning Ordinance that is defined as construction operations, but it is not allowed in the RRI or RR2 Districts. It is only allowed in the Industrial District and the Rural Industrial District. This means that even if an extraction operation were permitted, an onsite processing operation in the RR1 or RR2 zones would not be permitted. Whatever material was extracted would have to be taken elsewhere to be processed. Councilor Moriarty said that the Ordinance Sub-committee feels that it has done all that it can independently, and is looking to the remainder of the Council for their thoughts.

Councilor Perfetti said that one of the primary problems for him personally is that one of the requirements of a Contract Zone is that it provide public benefit. He feels that the use of a gravel pit in a defined residential area just does not fit, but he realizes that taking away an allowed use can also be problematic.

Councilor Turner said that the longevity of the use is an important factor. The restraints that within which somebody has to work to extract gravel is immense. An element of Contract Zoning is that the Council has the ability to plug in certain requirements that can assure that the neighbors are disturbed to a minimum.

Motion by Councilor Perfetti, seconded by Councilor Turner, to set a Public Hearing date (February 28<sup>th</sup>) 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.

VOTE: 7-0 UNANIMOUS PASSAGE

**11 – 011 To hold a Public Hearing to consider and act on authorizing the Town Manager to accept delinquent taxes and issue a quitclaim deed for property identified as Tax Map R07/Lot 84 in the amount of \$6,498.75.**

Public discussion: None

Motion by Councilor Stiles, seconded by Councilor Copp, to authorize the Town Manager to accept delinquent taxes in the amount of \$6,498.75 and issue a quitclaim deed for property identified as Tax Map R07/Lot 84.

VOTE: 6-1-0 (Councilor Perfetti absent for vote) MOTION PASSES

**11 – 012 To hold a Public Hearing to consider and act on authorizing the Town Manager to accept delinquent taxes and issue a quitclaim deed for property identified as Tax Map U20/Lot 70E in the amount of \$4,077.11.**

Public discussion: None

Motion by Councilor Stiles, seconded by Councilor Moriarty, to authorize the Town Manager to accept delinquent taxes in the amount of \$4,077.11 and issue a quitclaim deed for property identified as Tax Map U20/Lot 70E.

VOTE: 7-0 UNANIMOUS PASSAGE

**11 – 013 To hold a Public Hearing to consider and act on authorizing the Town Manager to execute project agreements with Maine Department of Transportation for the Tuttle Road sidewalk project and Tuttle Road pavement overlay project.**

Town Manager Shane explained that the Maine Department of Transportation requires a Public Hearing prior to executing the project agreements for these projects. These monies became available when the Town became eligible for a credit program through PACTS (due to the Route 88 reconstruction project) that allowed us a \$250,000 credit toward a project that has been in our CIP. This project is to build a sidewalk from Twin Brook to connect to the schools. The 2,200' of sidewalk extension will get us much closer, and the balance will be approximately 4,400' to get us to Twin Brook. The Town's portion of this project through cost sharing is approximately \$28,000.

Public discussion: None

Motion by Councilor Turner, seconded by Councilor Copp, to authorize the Town Manager to execute project agreements with Maine Department of Transportation for the Tuttle Road sidewalk project and Tuttle Road pavement overlay project.

VOTE: 7-0 UNANIMOUS PASSAGE

**11 – 014 To hear a report and authorize the Town Manager to process Senior Circuit Breaker program payments.**

Town Manager Shane reported that we had a record number of applications this year, over 117 totaling almost \$55,000 in rebates. The fund balance in the Senior Circuit Breaker fund is just over \$75,000, so the program is working as hoped and there has been a lot of positive feedback about the program.

Public discussion: None

Motion by Councilor Stiles, seconded by Councilor Turner, to authorize the Town Manager to expend up to \$55,000 for the FY'11 Senior Circuit Breaker program.

**11 – 015 To hear a report from the Nominating Committee re: board/committee vacancies.**

Councilor Porter explained that there was an oversight and a current member of the Val Halla Board of Trustees had not been reappointed, and there was a new application for the Board of Sewer Appeals.

There are still vacancies on the Board of Sewer Appeals, Cool Cities Committee, Lands & Conservation Commission, Prince Memorial Library Board, and Shellfish Conservation Commission. Anyone who is interested in serving, please fill out an application and send it to Town Hall.

Public discussion: None

Motion by Councilor Porter, seconded by Councilor Moriarty, to appoint Eileen Wyatt to the Board of Sewer Appeals, and William Putnam to the Val Halla Golf & Recreation Center Board of Trustees.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 – 016 To set a Public Hearing date (February 14<sup>th</sup>) to consider and act on a Class I Liquor License, Special Amusement Permit, and Auxiliary Mobile Golf Cart License for Val Hall Golf Course, for the period of February 2011 – February 2012.**

Public discussion: None

Motion by Councilor Turner, seconded by Councilor Stiles, to set a Public Hearing date of February 14<sup>th</sup> to consider and act on a Class I Liquor License, Special Amusement Permit, and Auxiliary Mobile Golf Cart License for Val Hall Golf Course, for the period of February 2011 – February 2012.

VOTE: 7-0

UNANIMOUS PASSAGE

**V. NEW BUSINESS**

**Councilor Turner** – None

**Councilor Copp** – None

**Councilor Porter** – He visited the Rines Forest over the weekend and it was difficult to see where the tree cutting was taking place. The work being done there is very impressive. A gem to the community and more residents should visit the Rines Forest.

**Councilor Perfetti** – None

**Chairman Storey-King** – She has received questions from residents regarding the business plan in the Doane property proposal. While many are concerned about conservation of the property, there are also proponents of local business and moving the project forward.

Congratulations to Bill and Linda Shane on their 25<sup>th</sup> wedding anniversary.

**Councilor Stiles** – Last Saturday he noticed that members of the fire department shoveling and clearing snow away from the fire hydrants. He requested that residents “adopt a hydrant” near their homes and keep them clear of snow.

A reminder that Veterans Monument donations are still needed.

**Councilor Moriarty** – Asked the Town Manager if the driveway access issue on Route 100 would be on a Council Agenda soon.

Town Manager Shane said that the VCC & VOC zones allow only commercial lots and restrict single family homes. Staff has come up with a recommendation to create an overlay over the Route 100 corridor that would permit single family homes in areas where the DOT had denied entrance permits (from the Gulf Station to approximately ½ way down Morrison’s Hill). MDOT felt that because of the truck passing lanes and speed in that area, they could not grant any opening permits. The Planning Board will be looking at this in February and the Council should get it in March.

**Town Manager Shane** – This Saturday, the Council is invited to a grand opening at Record Lumber at their new location on Route 100. Council Chair Storey-King will attend and cut the ribbon.

**VI. ADJOURNMENT**

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

VOTE: 7-0

TIME: 9:14 p.m.

Respectfully submitted by:

Brenda L. Moore  
Council Secretary