

# **MINUTES**

Cumberland Town Council Meeting  
Town Council Chambers

**MONDAY, September 24, 2012**

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

**Present:** Chairman Moriarty, Councilors Turner, Storey-King, Copp, Gruber, & Perfetti

**Excused:** Councilor Stiles

## **I. APPROVAL OF MINUTES**

Motion by Councilor Gruber, seconded by Councilor Storey-King, to accept the September 10, 2012 minutes as presented.

VOTE: 4-0-2 (Turner & Perfetti abstained)

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

The Fire Department recommends that families who will be attending the fair this week with children, take a photo of your child with your phone before entering the fairgrounds. If you should become separated from your child in the crowd, the photo will assist the emergency personnel in finding the child (what they are wearing, etc.). The Manager said this is good advice worth sharing.

Paving on Greely Road was completed late this afternoon. Greely Road will still have some issues with the base and drainage, but at 3.5 million dollars per mile to repair a road, the Manager said he is hoping to hang on until better times when a more permanent repair can be done. Work will begin on Middle Road and Friar Lane next.

Donations to the Community Food Bank have been very successful lately. Fred Kinney & family, Atlantic Regional Federal Credit Union, Norton Financial Services, Rachel's on the Green, and many others who wish to remain anonymous, have donated over \$2,000 to be used to purchase meat for the food bank. A lot of people came forward after Councilor Stiles plea for donations to be used during the 4-H meat auction taking place on Wednesday at the fair (the Manager will be attending the auction to purchase meat for the food bank). The Lions Club has generously offered the use of 7 freezers for the food bank.

## **III. PUBLIC DISCUSSION**

None

## **IV. LEGISLATION AND POLICY**

### **12 – 161 To consider and act on the acceptance of equipment and assets from the Nordic Ski Club to be incorporated into the Parks Department budget and to create an account for snow making operations.**

Town Manager Shane explained that back in May, the Nordic Ski Club approached the Town to see if there was any interest in the Town taking over the Nordic Ski program at Twin Brook. The club had been very successful over the years and was able to purchase snow grooming and snow making equipment. When Pineland Farms ski trails opened, participation at Twin Brook began to dwindle. The ski program is still viable and they have equipment and approximately \$24,000 in cash. They would like to turn over the equipment and cash assets to the Town in exchange for the Council to consider maintenance of the ski trails at Twin Brook. However, the Town does not have the staff to commit to snow making. John Eldredge and John Tarling of the ski club are both present this evening to answer any specific questions that the Council may have.

Mr. Eldredge explained that the ski club was started approximately 15 years ago. Within 2 years of start-up it became apparent that a partnership between the club and the Town made sense. The club raised enough money over the years to purchase a lot of equipment. The club is basically “defunked” now and they would like the Town to take over the trail grooming operations so Nordic skiing can continue in Twin Brook. Mr. Eldredge said that it is in the club’s interest to gift to the Town the physical assets of the club as well as roughly \$24,700 in cash. The club requests that the cash be put into a fund earmarked specifically for Nordic skiing.

Councilor Storey-King referred to a memo in the meeting materials and asked Mr. Eldredge about a comment related to charging a fee to offset costs. She asked Mr. Eldredge if he was referring to large groups, individuals, or both.

Mr. Eldredge said that historically, the ski club has charged a per-head fee to school groups (typically \$20 per head). During a “normal winter” Twin Brook is a race site. The host site charges a per-racer fee (\$4 per head). Mr. Eldredge said that he would encourage Twin Brook to charge these fees, which are typical. There are several revenue sources even though the middle and high school usage has declined.

Councilor Perfetti asked Mr. Eldredge if it is the ski club’s wish and intention is that skiing continues at Twin Brook.

Mr. Eldredge said that it is. It has been a valuable and worthwhile amenity that the Town has offered throughout the years and he would like to see it continue.

Councilor Perfetti requested that Mr. Eldredge “stay plugged in” to the program in the coming the years, because the action this evening may be to simply accept the gift with no guarantees that a future Council will want to continue to fund skiing at Twin Brook for perpetuity.

Mr. Eldredge said that he is hopeful that there will be skiing at Twin Brook for a long time, but the truth is there is no longer a Nordic Ski Club, so the most practical solution would be to have the Town take over ownership of the assets.

Councilor Gruber thanked Mr. Eldredge and Mr. Tarling for all the work that they have done over the years. He explained that the Finance Committee spent a lot of time looking at this offer. It is possible that it could become a liability to the Town (the life expectancy of the equipment and the expectation within the community). Personally, he is not too keen on the Town getting into the snow making business. The equipment can be very dangerous so volunteers should not assist. All organizations start with good intentions, then when it fizzles out, they want to give it to the Town. He is concerned that by accepting these assets, it will set the Town up for other groups to come forward to donate their equipment and expectancy to continue their program. The first time the Town has to repair or replace one of these pieces of equipment, it is going to cost a lot of money. He told Mr. Eldredge that he is all for helping the club out, but is concerned about the financial hit and expectation.

Mr. Eldredge said that there is an immediate opportunity to take over the equipment and cash and be able to sustain Nordic Skiing for the foreseeable future. During that period of time, Mr. Eldredge would encourage the Council to keep their eyes and ears open for the next interested group of people who would want to step forward and take charge of the club and ski program. If the Town doesn’t think they can sustain Nordic skiing for 5-6 years down the road, they can close it up.

Councilor Storey-King said that it seems that every budget year, there is something else for the Town to subsidize, such as the pool or Val Halla (apologies to the Manager). The fees at Val Halla eventually had to

be increased and the Town may have to charge skiers to ski at Twin Brook. She feels that the ski program will have to be looked at very closely every year to determine if the community supports it or not.

Councilor Copp said that this appears to be a generous donation to the Town, but he has given it a lot of thought and he has never seen the snowmaking work at Twin Brook. It would be hard for him to have the Town receive a 17-year old Piston Bully. He knows enough about the machinery to know that you cannot go to NAPA and buy a part when needed. To replace the equipment, in its entirety, would be very expensive. There is a lot of liability that goes with accepting this gift. He is looking at this as a taxpayer and does not think he can support it.

Councilor Turner said he sees no reason to look a gift horse in the mouth. To continue Nordic skiing, the Town would not be out of pocket anything initially. If a piece of equipment breaks, it would not have to be replaced and if there isn't sufficient supporting interest in the sport, the program can be ended. The Ski Club is trying to do something positive and he feels that the Town should give it a chance.

Councilor Gruber said he would like to wait and not vote on this this evening. He would like to gather more information, have the Finance Committee, Recreation Department, and Mr. Eldredge meet and come up with a plan of sustainability for the ski program.

Town Manager Shane said that the program may come down to a snowmobile with a groomer behind it simply grooming trails. This equipment will not become part of the equipment replacement schedule. The Manager and Mr. Eldredge have had this discussion. Mr. Eldredge is aware that the program will not be status quo. There is no way for the Town to promise what the program will be in the future.

Chairman Moriarty said that he views this as a transitional type of proposal. With the acceptance of the equipment and money, the Town can, for a short period of time, continue what we have been doing for 15 years. It is clear from the discussion this evening that within the transition period of, others will have to come forward and assume responsibility and do the long range planning for equipment replacement. The Town is in no way obligating itself to do any of that. He is grateful to accept the donations this evening, and if it turns out that others do not come forward and the burden is more than the Town and residents are willing to bear, then the program can be downsized and it reverts back to what it was in its early years. The Town is not making any long term promises by the mere acceptance of these assets. He feels that Mr. Eldredge, Mr. Tarling, and the club realize this.

Mr. Eldredge acknowledged that without significant public support, the program would not last forever. He said he hopes that the transition will be communicated somehow to the skiing public. There are people who will be motivated to help.

Motion by Councilor Perfetti, seconded by Councilor Turner, to accept the equipment and assets from the Nordic Ski Club.

VOTE: 5-1 (Copp opposed)                      MOTION PASSES

## **12 – 162 To hold a Public Hearing to consider and act on amendments to the Cumberland Traffic Ordinance to adopt a no parking area on Range Road.**

Town Manager Shane explained that the photo below is the no parking area on Range Road and Route 100 (at HART Animal Shelter) that the Police Chief and Manager worked on last month.





After numerous e-mails over the weekend from HART volunteers and supporters, the Police Chief and Manager came up with what he considers to be a fair compromise (photo below):



Town Manager Shane explained that the problem with this area is traffic turning onto Range Road in a 50 mph zone with vehicles parked on the corner of Range Road.

Chairman Moriarty opened the Public Hearing.

Public comment:

Attorney Andrew Broddus, volunteer at HART Animal Shelter, explained that the shelter is run entirely by volunteers and depends on a lot of fundraising. He feels that it is a good compromise and it would be a good idea to monitor the no parking area for one year.

Laura Edgar, Manager of HART, asked if the Town was going to post no parking signs.

Town Manager Shane responded that there will be sign posted.

Chairman Moriarty closed the Public Hearing.

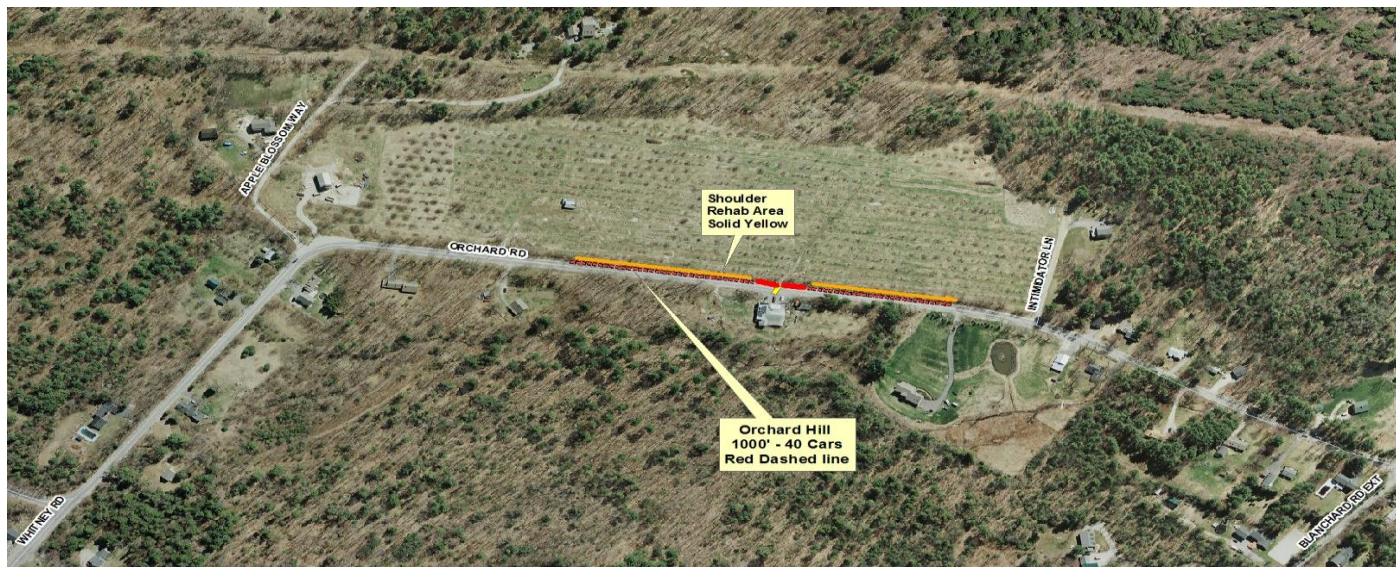


Motion by Councilor Copp, seconded by Councilor Gruber, to amend the Chapter 282-14 of the Cumberland Code (Vehicles & Traffic) Subsection C & F and Schedule A, per the amended plan and description; It shall be unlawful, except in an emergency, for any person to park a motor vehicle of any kind, at any time on any portion of the paved surface or within 5 feet of the paved surface on Range Road, beginning at the intersection of Route 100 and ending 125' northeast along the northeasterly side of Range Road and more specifically as marked by signs stating "No Parking Here to Intersection".

VOTE: 6-0

UNANIMOUS PASSAGE

**12 – 163 To hold a Public Hearing to consider and act on amendments to the Cumberland Traffic Ordinance to adopt a no parking area on Orchard Road.**



Town Manager Shane explained that Mr. Pierce came forward to assist when he learned of the no parking proposal in front of his business on Orchard Road. Mr. Pierce has the equipment and will fill and culvert the ditch, creating a shoulder to allow parking. The Town will provide the gravel and piping. This is also a compromise that will work out nicely.

Councilor Copp said that Mr. Pierce's offer to do the shoulder work is very generous.

Chairman Moriarty opened the Public Hearing.

Public comment: None

Motion by Councilor Copp, seconded by Councilor Storey-King, to amend the Chapter 282-14 of the Cumberland Code (Vehicles & Traffic) Subsection C & F and Schedule A, per the attached plan and description; It shall be unlawful, except in an emergency, for any person to park a motor vehicle of any kind, at any time, between August 15<sup>th</sup> and October 15<sup>th</sup> on any portion of the paved surface or within 5 feet of the paved surface on Orchard Road, beginning 610' northeast of the centerline of Intimidator Lane and ending 740' northeast of the centerline of Intimidator Lane and more specifically as marked by two signs stating "No Parking Between Signs".

VOTE: 6-0

UNANIMOUS PASSAGE



**12 – 164 To hold a Public Hearing to consider and act on amendments to the Cumberland Traffic Ordinance to adopt a no parking area on Whitney Road.**



Town Manager Shane explained that this is a similar area of congestion when Terrison's Orchard is busy. According to the Police Chief, it has been more of a problem in past years. There is ample parking across the street on the orchard side of the road. The Terrison's have been contacted and have expressed no concern.

Chairman Moriarty opened the Public Hearing.

Public comment: None

Motion by Councilor Storey-King, seconded by Councilor Copp, to amend the Chapter 282-14 of the Cumberland Code (Vehicles & Traffic) Subsection C & F and Schedule A, per the attached plan and description; It shall be unlawful, except in an emergency for any person to park a motor vehicle of any kind, at any time between August 15<sup>th</sup> and October 15<sup>th</sup> on any portion of the paved surface or within 5 feet of the paved surface on Whitney Road, beginning 550' northwest of the centerline of Orchard Road ending 1050' northwest of the centerline of Orchard Road and more specifically as marked by two signs stating "No Parking Between Signs".

VOTE: 6-0

UNANIMOUS PASSAGE

**12 – 165 To hear a report from the Town Manager re: updating the Aquifer Protection Ordinance as recommended by John Sevee of Sevee & Maher Engineers.**

Chairman Moriarty explained that Mr. Sevee's report describes the sand and gravel aquifers (3 in Town), their location, size and capacity, and how vulnerable they are to pollution, particularly the 2 that are not covered by a layer of protective materials. This is a good opportunity to consider the accuracy of the protections that we have.

Town Manager Shane said that the ordinance that Mr. Sevee prepared has significant implications to the Industrial Zone in West Cumberland. Our current Aquifer Protection Ordinance is very generic. The new ordinance gets into specific language related to lot coverage and types of materials that will be prohibited or permitted. Effectively, it would eliminate the industrial zone in West Cumberland. That is not a bad thing when you looking at a way to protect 5 billion gallons of water. This new ordinance has been a great

education process for Town staff as well as the Planning Board. It needs to be understood that this new ordinance will be a significant change and it will have an impact for some of the businesses in West Cumberland.

The Manager recommended that the Council consider giving the draft ordinance back to staff to review, and then send it to the Ordinance Committee for their review and recommendation.

Chairman Moriarty asked the Manager if the fact that the Council is taking this matter up this evening would prevent someone from submitting an application under the current Aquifer Protection Ordinance.

The Manager responded that the Town Attorney has advised him that stronger language or a moratorium would be necessary to prevent that. Since junk and salvage yards are currently not permitted, what is left would still come under the Aquifer Protection Ordinance. One of the big problems with some of the more industrial users is petroleum, which is currently prohibited from being stored. There are no pending applications as of right now.

Chairman Moriarty said that he agrees that this should go back to staff and the Ordinance Committee for review, but he would prefer to consider a moratorium to be sure that the Town is not leaving itself exposed.

Councilor Copp said that he is hesitant as to how this will affect current land owners in the Industrial Zone, for example, Storey Brothers, who own a pit in the zone and do a great job with it. He wants to make sure that this will not prohibit them from doing what they intended to do in their gravel pit five years ago when they bought it. He feels that would be wrong. He realizes that the aquifer has to be protected, but the Industrial Zone is a very small zone.

Councilor Perfetti said that he feels it important to attempt to educate everyone in the zone (residents and businesses) the importance of protecting the aquifer.

Councilor Storey-King asked the Manager if he had advised any of the gravel pit owners in West Cumberland that a new Aquifer Protection Ordinance was being considered.

The Manager responded that he had spoken to each one of them.

Councilor Storey-King said that she will not support the moratorium yet, because she feels it may not be something that needs to be done. It can be avoided with early communication to 6-8 property owners.

Motion by Councilor Perfetti, seconded by Councilor Gruber, to direct the Manager and staff to prepare and advertise a moratorium for the October 8, 2012 Town Council meeting.

VOTE: 4-2 (Storey-King & Copp opposed)                      MOTION PASSES

Motion by Councilor Perfetti, seconded by Councilor Gruber, to refer the Aquifer Protection Ordinance to Town Staff, and then the Ordinance Committee, and to report back to the Town Council at a later date, with a recommendation.

VOTE: 6-0                                              UNANIMOUS PASSAGE

**12 – 166 To set a Public Hearing date (October 8<sup>th</sup>) to consider and act on junkyard/recycler permit renewal for Cumberland Salvage.**

Motion by Councilor Gruber, seconded by Councilor Perfetti, to set a Public Hearing date of October 8<sup>th</sup> to consider and act on junkyard/recycler permit renewal for Cumberland Salvage.

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

**12 – 167 To consider and act on sending to the Planning Board for a Public Hearing and recommendation, amendments to Chapter 315, Article VI (General Regulations), Subsection 315-45 (Conversions), Section A (Accessory Apartments) of the Cumberland Zoning Ordinance.**

Economic Development Director, Alyssa Tibbetts presented the following re: accessory dwelling units:

**Accessory Dwelling Units  
Chapter 315 – ZONING**

1. Add new definition to §315.4
2. Amend §315-45A, currently “Accessory Apartments”
3. Add use, with reference to §315-45A, to all zones where residential uses are permitted – excludes VCC, OC-N, OC-S and I.
4. Amend Site Plan Review Ordinance, §229-2B to add classification level for accessory dwelling unit as permitted in §315-45A

***1. Add New Definition for Accessory Dwelling Unit - §315.4***

Accessory Dwelling Unit (ADU): A secondary dwelling unit established in conjunction with and clearly subordinate to a primary dwelling unit, whether a part of the same structure as the primary dwelling unit or a detached dwelling unit on the same lot.

***2. Amend §315-45A, currently “Accessory Apartments”***

A. Accessory Apartments Dwelling Units: Any single-family dwelling or an existing accessory structure, which is either attached to or detached from, to the primary dwelling unit, may be constructed, altered or expanded to include one apartment additional dwelling unit, in accordance with Site Plan Review requirements and the following standards; subject to the approval of the Board of Adjustment and Appeals as a special exception and in accordance with the following standards:

- (1) The unit to be added shall include no more than one bedroom and shall not exceed 40% of the total living area of the building primary dwelling unit.
- (2) ~~The Board may waive the District lot size requirements~~ may be waived, provided that the Local Plumbing Inspector indicates adequate capacity and conformity with the State Plumbing Code, but in no case shall such conversion be allowed on a lot smaller than 20,000 square feet unless connected to public sewer.
- (3) This provision shall not prohibit the conversion of a single-family dwelling to a duplex or multiplex dwelling or the conversion of a duplex dwelling to a multiplex dwelling, so long as said conversion complies with all district and other zoning standards, including but not limited to the minimum lot size per dwelling unit.
- (4) ~~An accessory apartment may be constructed in a detached accessory structure, provided that the lot standards, and the setback requirements from the single family dwelling to the accessory structure, for the district in which it is located cannot be met for each structure. The parcel on which the single family dwelling and the detached accessory structure are located cannot be split so that each structure is on a separate parcel~~

3. *Add use to all zones where residential uses are permitted – excludes VCC, OC-N, OC-S and I.*

4. *Amend Site Plan Review Ordinance §229-2B to add classification level for accessory dwelling unit as permitted in §315-45A*

Chairman Moriarty explained that it was brought to his attention that the current ordinance allows someone to convert an existing garage or other structure into an accessory apartment, but it does not allow a new accessory apartment to be built (attached or freestanding). The Ordinance Committee looked at this and was baffled as to why it would be like this, and decided to bring it to the Council.



Motion by Councilor Gruber, seconded by Councilor Perfetti, to send to the Planning Board for a Public Hearing and recommendation, amendments to Chapter 315, Article VI (General Regulations), Subsection 315-45 (Conversions), Section A (Accessory Apartments) of the Cumberland Zoning Ordinance.

VOTE: 6-0

UNANIMOUS PASSAGE

**12 – 168 To set a Public Hearing date (October 8<sup>th</sup>) to consider and act on draft zoning amendments to the Official Cumberland Zoning Map to change Tax Assessor Map R07 Lots 44, 45, 45A and 45B from the Industrial District (I) to the Rural Residential District 2 (RR2), as recommended by the Planning Board.**

Motion by Councilor Perfetti, seconded by Councilor Gruber, to set a Public Hearing date of October 8<sup>th</sup> to consider and act on draft zoning amendments to the Official Cumberland Zoning Map to change Tax Assessor Map R07 Lots 44, 45, 45A and 45B from the Industrial District (I) to the Rural Residential District 2 (RR2), as recommended by the Planning Board.

VOTE: 5-0-1 (Copp abstained)

MOTION PASSES

**V. NEW BUSINESS**

**Councilor Turner** – He traveled out of the country recently and it made him appreciate his home, particularly Cumberland. It gave him the opportunity to do some soul searching about what is wrong with our country.

**Councilor Copp** – Cumberland has lost a lifelong resident. Mr. Seekins passes away recently. They are wonderful people and his heart goes out to the family.

Mr. Jensen of Range Road also passed away. He was a great man who also was a longtime resident.

**Councilor Storey-King** – She received the invitation to the annual employee appreciation luncheon to be held on October 1<sup>st</sup>. She will not be able to attend, but asked the Manager to extend her appreciation to all the Cumberland employees.

**Councilor Perfetti** – He reminded the public that there is no official Council policy regarding responding to public inquiries or comments. A resident commented about the lack of Council response to e-mails. He would like the Council to address this in the future to be sure that residents get some sort of response.

Councilor Storey-King said that it becomes difficult with e-mail. Any e-mail is subject to Freedom of Information Act laws and makes *all* e-mails accessible to attorneys, etc. She suggested calling any Councilor with questions or comments. She has nothing to hide, but feels that the Manager generally responds and his answers reflect the direction of the Council.

Chairman Turner said that his obligation is to every resident of this Town and sometimes his silence to an e-mail *is* his answer.

**Chairman Moriarty** – If he feels that the Manager has answered a residents question or responded to a comment, he will not respond because it will only be a repetition of what has already been said. It is not his intention to appear rude or impolite to anybody. He agreed with Councilor Storey-King that phone calls are much more efficient and he encouraged residents to call him anytime.

**Councilor Gruber** – Thank you to the Manager for getting the railroad arms installed on Greely Road.

He attended an open house at Doc's Café over the weekend. It was very nice.

Thank you to all the volunteers who have helped with the construction of the new food bank as well as the many people who have volunteered to work at the food bank. The target date to open is still November 2<sup>nd</sup>.

**Town Manager Shane** – None

**VI. ADJOURNMENT**

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

VOTE: 6-0

TIME: 9:02 p.m.

Respectfully submitted by,

Brenda L. Moore  
Council Secretary