

MINUTES
Cumberland Town Council Meeting
Town Council Chambers
MONDAY, March 26, 2012

6:00 P.M. WORKSHOP: re: Growth and Impact Fee Ordinance

7:00 P.M. Call to Order

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

I. APPROVAL OF MINUTES

March 12, 2012

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

VOTE: 7-0 UNANIMOUS PASSAGE

II. MANAGER'S REPORT

North Yarmouth Select Board Chairman, Paul Napolitano called today to thank the Town and the Cumberland Police Department for responding to a rescue call in North Yarmouth recently. Mr. Napolitano wanted to thank Officer Tony Ridge for his training, skill, and the speed of his response. He also wanted to extend a thank the Town of Cumberland for allowing Cumberland Public Safety personnel to respond to emergencies in North Yarmouth. Mr. Napolitano is going to suggest to the North Yarmouth Select Board that they assist in the purchase of needed equipment for the Cumberland Fire/Rescue Department.

Maine Standards had their sketch plan review before the Planning Board last week. The Town is very excited to have Maine Standards here in Cumberland.

Exactitude dropped off their building permits today. They should be breaking ground within the next two weeks. We are also happy to have Exactitude in Cumberland. Lots of good things are happening on the southern end of Route One.

We received word that MDOT has approved the funding of the remainder of Blanchard Road (from the fairgrounds to Skillin Road). The total project will cost \$750,000 – 1 million dollars to complete.

III. PUBLIC DISCUSSION

Andy Haggerty, owner of three lots on Gray Road, introduced his Realtor, Mike Rogers. Mr. Rogers said that only 3 land listings have sold on Gray Road in Cumberland in the last 10 years. There have been a number of towns in Southern Maine that are looking at promoting residential use in commercial areas, with the goal of allowing people to live, work, and play in the same area. Mr. Rogers said that Mr. Haggerty has a great concept of having storage units of the first floor of a building that has the appearance of a barn, with residential units above.

Mr. Haggerty thanked Town Staff for their help when he presented this plan. It doesn't make sense to him that the small zone that his property is located in does not allow any residential use, but all the surrounding zones do. Mr. Haggerty said that he is hopeful that he and the Town can come to some agreement to allow him to construct his storage facility.

Town Manager Shane explained that the Ordinance Committee has looked at Mr. Haggerty's proposal twice and said no twice. Mr. Haggerty then requested that self-storage building be added to the VCC zone. Town Staff went forward with that request and Mr. Haggerty withdrew his request at the last minute because he

wanted to add residential units. The Council had said previously that they would allow that type of building to be considered in the VCC if the applicant went through the Planning Board process, but Mr. Haggerty never got to that step because he withdrew his application.

IV. LEGISLATION AND POLICY

12 – 039 To hold a Public Hearing to consider and act on draft zoning amendments to the Growth Management Ordinance, as recommended by the Planning Board.

Town Manager Shane explained that the Growth Ordinance limits the number of construction permits each year. The Ordinance Committee and the Planning Board both support a growth cap of 50 permits per year with no sub-categories.

Public discussion: Brad Hilton of Blanchard Road said that in his view, the Growth Ordinance is an anti-growth ordinance. The ordinance was developed in 2000 and the amendments are fine, but he would like to see some pro-growth legislation.

Councilor Turner said that 50 construction permits per year makes sense to him, as we have never come close to hitting the cap in the past.

Councilor Moriarty said that operationally, this ordinance is not anti-growth because we are nowhere near the cap. If the economy should change and we approach the cap, the ordinance could then be changed.

Motion by Councilor Stiles, seconded by Councilor Gruber, to adopt amendments to the Growth Management Ordinance as presented.

VOTE: 7-0

UNANIMOUS PASSAGE

12 – 040 To hold a Public Hearing to consider and act on draft zoning amendments to the Recreational Facilities & Open Space Impact Fee Ordinance, as recommended by the Planning Board.

Town Manager Shane explained that the Planning Board vote was 4-3 to move the Impact Fee Ordinance forward to the Council. The methodology was to look at the balance of the Rines Forest and Twin Brook bonds (approximately 2.1 million dollars) over a 30 year period and 50 permits per year = \$1.09 per square foot. The 500 square foot exemption remains.

Economic Development Director, Alyssa Tibbetts summarized the law that pertains to impact fees. Impact fees have its own statute that allows the Town to assess impact fees. The Town of Cumberland chose to use their impact fees for recreational facilities and to purchase open space, which is allowed by law. The statute speaks to restrictions on assessing and imposing impact fees, requiring uniform application and the relation of the fees to development. The funds must be kept separate from a municipality's general fund.

Councilor Turner asked Ms. Tibbetts if there was any legal reason that the square footage exemption could not be increased.

Ms. Tibbetts responded that there is not. If the Council made a policy decision to raise the square foot exemption, that directly impacts the calculation in the ordinance, but there is nothing in the law that prohibit it as long as it is applied uniformly.

Public discussion: Peter Valente of Cumberland said that he attended the workshop this evening. In the last 6 months, he has been advocating against impact fees, and thanked Town Manager Shane for his openness and willingness to discuss this topic and explain it. He encouraged the public to get involved and let the Council

know how they feel. Mr. Valente said he would like the taxpayers to share the cost of the privilege of having Rines Forest and Twin Brook.

Brad Hilton of Blanchard Road presented the following to the Council:

**Town of Cumberland
Growth & Impact Fee
Ordinance Revisions**

Brad Hilton
Blanchard Road
Cumberland, Maine
March 26, 2012

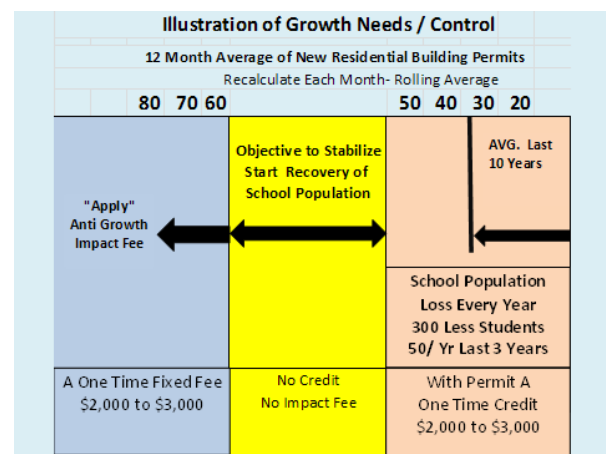
Growth Ordinance Revisions

- **No Opinion – Accept or Reject**

But Consider
“ Hilton Growth Ordinance for
Future Revision”

**Recreational Facilities and Open
Space Impact Fee Ordinance**

- **Reject Revisions**
- **Discontinue Present Ordinance**
- **Consider “ Hilton Growth Ordinance” as
a Concept to add “Pro – Growth” to a
present All “Anti-Growth” Situation**



Mark Gerard would also like to see the Town eliminate impact fees. In the current environment, the impact fee is an upfront cost, at great risk to developers. The fee is not absorbed into the cost of the house. Appraisers are looking at comps, often disbursed over a broader base and typically compared to communities who do not have impact fees. That amount becomes non-financeable. Mr. Gerard said that he feels that Cumberland realizes that affordable housing and school population are both issues. \$2,000 - \$3,000 can make or break a housing deal. Every house built will guarantee \$4,000 - \$6,000 in taxes for 40 years. The \$2,000 impact fee is a one-time fee. He feels that impact fees are incentivizing the people that we want most in the community to look elsewhere. He urged the Council to seriously consider eliminating impact fees because it is in the best long-term interest of Cumberland and the growing families that we hope to attract to our community.

Councilor Moriarty asked Councilors Copp, Storey-King, and Turner (who made up the ad hoc committee) if they had any desire to meet again to discuss and rework the numbers.

Councilor Storey-King said that she would like to look at the square footage number again as she is interested in finding a compromise. She is concerned about the elderly residents of our community and raising their taxes.

Councilor Turner feels that it would be a mistake to table this item again. The bottom line is that there is a large subjective element as to whether impact fees deter someone from moving to Cumberland. His sense is that they

should be eliminated, but since that will not likely happen, he would compromise by raising the square foot deduction.

Councilor Copp agreed with Councilor Turner and said that impact fees do discourage people from buying a home in Cumberland, especially first time home buyers to whom \$3,000 is a lot of money. He feels that continuing to discuss this will not make a difference. He would like to see the fee reduced or eliminated.

Councilor Stiles said that Mr. Hilton's comment regarding \$7,000 per house for taxes is true, but the Town does not get to see 75% of that tax revenue. However, the Town gets 100% of the impact fees. He also believes that with the current economic situation, impact fees are too much for the average family. He would like to table this item to get more information.

Councilor Gruber said that if the Council chooses to eliminate impact fees, this will upset the people who have had to pay them in the past. He does not think that lowering the square footage or the lowering the impact fee is the way to go. He feels that it should be eliminated or left as is. He is for tabling this item and sending it back to the committee.

Town Manager Shane reminded the Council that if impact fees are eliminated, the Town would owe Bateman Partners \$98,000 for the impact fees on future building lots as part of the contract zone on the Drowne Road project. There is also the equation to consider. In order to make the formula less confusing and avoid reworking the entire formula, he suggested raising the square foot exemption and leaving the dollar amount at \$1.09.

Chairman Perfetti said that there have been some good points made this evening. The fact is that as a community, we bought this land together, and together we should pay for it. We need people wanting to move here and we need to grow as a community. He would be in favor of eliminating impact fees.

Councilor Moriarty said that the ordinance has been in effect for 10 ½ years and it explicitly provides that the impact fees are designed to fund, acquire, and improve recreational and open space for future residents. This is a forward looking ordinance. The definition of an impact fee is "a fee or an assessment charged by the Town against new, residential construction to help with the acquisition or development of additional lands and recreational facilities". It was never anticipated that impact fees would alleviate the entire burden from the taxpayer. The intent was to help the taxpayer. In the past 10 years, the Town has collected over \$730,000 in impact fees that have been used for one purpose. It is \$730,000 that the Town did not have to ask the taxpayers for. Councilor Moriarty said that the suggestion of increasing the exemption from 500 square feet to 1,000 is a compromise that makes sense.

Motion by Councilor Stiles, seconded by Councilor Moriarty, to adopt amendments to the Recreational Facilities & Open Space Impact Fee Ordinance as presented.

VOTE: 3-4 (Copp, Gruber, Perfetti & Turner opposed) MOTION FAILS

Motion by Councilor Moriarty, seconded by Councilor Copp, to adopt the amendments to the Recreational Facilities & Open Space Impact Fee Ordinance with the provision that the exemption be increased from 500 to 1,000 square feet and that the Town Manager and his staff come back to the Town Council in two weeks with draft language reflecting that change.

VOTE: 4-3 (Perfetti, Stiles & Gruber opposed) MOTION PASSES

12 – 041 To hold a Public Hearing to consider and act on draft zoning amendments to Section 104.140 (definition of Self Storage Facilities), to include design standards, as recommended by the Planning Board.

Economic Development Director, Alyssa Tibbetts explained that Mr. Haggerty came to the Town with a proposal for a self-storage barn on his property that would fit the commercial use and look similar to the other

businesses on the Route 100 corridor. As Town staff met with Mr. Haggerty, they talked about the use, where it was allowed, and what else it might impact. The purpose of the next few agenda items is an attempt to clean up other ordinance provisions related to self-storage facilities. As it exists now, the design standards do not regulate the amount of overhead type external doors that would be allowed. This amendment to the Route 100 design standards specifically relates to overhead doors. The definition of self-storage facility was amended to reference the new design standards.

Town Manager Shane added that simply put, this is a clean-up of definitions and the section that applies to self-storage facilities and only in the Route 100 corridor.

Public discussion: None

Motion by Councilor Moriarty, seconded by Councilor Copp, to amend Section 104.140 (definition of Self Storage Facilities) of the Cumberland Zoning Ordinance, as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 042 To hold a Public Hearing to consider and act on draft zoning amendments to Section 420 (Self Storage Facility), to require internal access to units and limit external garage doors to one standard door on the front of building facing the road and no more than two overhead doors on the remainder of the building, as recommended by the Planning Board.

Councilor Storey-King commented on the wording “standard garage door” saying that if a standard size garage door was on the front of a building such as the Board Barn, that small door on a large barn would look out of place.

Town Manager Shane said that the point is to have one overhead door and not a series of doors facing the road. Larger overhead doors would be allowed on the side or back of a building, and this only applies to self-storage facilities.

Public discussion: Adam Dews, a Cumberland resident and owner of an overhead door company, said that the standard single car overhead door is roughly 9’ x 8’. A commercial door for a storage facility large enough to fit a moving truck through would be approximately 10’ x 10’. Mr. Dews commented that he is not sure why limiting the number of garage doors is a good idea because there are so many choices of garage door design these days. He feels that the Planning Board should decide if a door looks nice and not limit the choice of the owner of the building.

Motion by Councilor Copp, seconded by Councilor Gruber, to amend Section 420 (Self Storage Facility) of the Cumberland Zoning Ordinance to require internal access to units and limit external garage doors to one standard door on the front of building facing the road and no more than two overhead doors on the remainder of the building, as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 043 To hold a Public Hearing to consider and act on draft zoning amendments to Section 204.14.1.13 (Industrial District) (Self-Storage Facilities), to add; *subject to the provisions of Section 420*, as recommended by the Planning Board.

Public discussion: None

Motion by Councilor Turner, seconded by Councilor Stiles, to amend Section 204.14.1.13 (Industrial District) (Self-Storage Facilities) of the Cumberland Zoning Ordinance to add “*subject to the provisions of Section 420*”, as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 044 To hold a Public Hearing to consider and act on draft amendments to the Site Plan Ordinance to include a definition of “Total Building Area”, as recommended by the Planning Board.

Town Manager Shane explained that this was brought about at staff request because there was no definition of total building square footage and what it equals (does it include attics and basement space?). The definition will be “the total area, in square feet, of all floors of a building as measured from the interior faces of the exterior walls, excluding unfinished attics and unfinished basements”.

Public discussion: None

Motion by Councilor Gruber, seconded by Councilor Stiles, to amend the Site Plan Ordinance to include a definition of "Total Building Area", as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 045 To hold a Public Hearing to consider and act on draft amendments to the Route 100 Design Standards to add Section 2.1.5 (Overhead Doors), as recommended by the Planning Board.

Town Manager Shane explained that this addresses the overhead doors blending in architecturally. This only applies to Route 100 and all new commercial buildings (not just self-storage facilities).

Public discussion: Adam Dews asked what the definition of “overhead door” is. He feels it should be defined.

Town Manager Shane agreed that is a good point, as it is not defined.

Councilor Moriarty said that he feels this needs some more work. Defining overhead door, and indicating the façade facing Route 100, and door size on the rear and side of the building. He suggested tabling this item to the next meeting.

Motion by Councilor Moriarty, seconded by Councilor Copp, to table this item to the next meeting.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 046 To set a Public Hearing date (April 9th) to consider and act on a Mass Gathering Permit for the Cumberland Farmers Club’s “Cumberland/Windham Family Fundraiser” to be held at the Cumberland Fairgrounds on May 5, 2012 from 1:00 – 8:30 p.m.

Motion by Councilor Stiles, seconded by Councilor Turner, to set a Public Hearing date of April 9th to consider and act on a Mass Gathering Permit for the Cumberland Farmers Club's "Cumberland/Windham Family Fundraiser" to be held at the Cumberland Fairgrounds on May 5, 2012 from 1:00 - 8:30 p.m.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 047 To set a Public Hearing date (April 9th) to consider and act on a Mass Gathering Permit for Nassau Broadcasting’s “Maine’s Ultimate Yard Sale” to be held at the Cumberland Fairgrounds on June 9, 2012 from 9:00 a.m. – 2:00 p.m.

Motion by Councilor Copp, seconded by Councilor Stiles, to set a Public Hearing date of April 9th to consider and act on a Mass Gathering Permit for Nassau Broadcasting's "Maine's Ultimate Yard Sale" to be held at the Cumberland Fairgrounds on June 9, 2012 from 9:00 a.m. - 2:00 p.m.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 048 To set a Public Hearing date (April 9th) to consider and act on a Mass Gathering Permit for the Chickadee Classic Dog Show to be held at the Cumberland Fairgrounds, June 21st – 24th from 8:00 a.m. – 5:00 p.m.

Motion by Councilor Stiles, seconded by Councilor Moriarty, to set a Public Hearing date of April 9th to consider and act on a Mass Gathering Permit for the Chickadee Classic Dog Show to be held at the Cumberland Fairgrounds, June 21st - 24th from 8:00 a.m. - 5:00 p.m.

VOTE: 7-0

UNANIMOUS PASSAGE

12 – 049 To appoint a member to the Recreation/Community Education Advisory Board.

Councilor Copp said that he and Councilor Turner met with Mr. Carey earlier this evening and it is with great pleasure that they nominate him to the Recreation/Community Education Advisory Board.

Motion by Councilor Gruber, seconded by Councilor Copp, to appoint Steven Carey to the Recreation/Community Education Advisory Board.

VOTE: 7-0

UNANIMOUS PASSAGE

12 – 050 To set the week of May 14th – 18th as Bulky Item Pickup Week.

Motion by Councilor Copp, seconded by Councilor Stiles, to set the week of May 14th - 18th as Bulky Item Pickup Week.

VOTE: 7-0

UNANIMOUS PASSAGE

12 – 051 To consider and act on a Victualer's License for Doc's Café & Marketplace.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to table this item to April 23, 2012.

VOTE: 7-0

UNANIMOUS PASSAGE

12 – 052 To hold a Public Hearing to consider and act on adoption of the FY'13 Municipal Budget.

Town Manager Shane explained that the Finance Committee respectfully requested that this item be tabled to the next meeting in order to get more information from the Town Assessor and School Department.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to table this item to April 9, 2012.

VOTE: 7-0

UNANIMOUS PASSAGE

V. NEW BUSINESS

Councilor Turner – None

Councilor Copp – None

Councilor Storey-King – Diana Copp is looking for names of active duty military personnel. She would like to put them on a wall of honor at Town Hall.

There was an article in the Portland Press Herald regarding the Prince Memorial Library and the work of Director, Thomas Bennett who conducted historical research on the poor and indigent of our community. Mr. Bennett will be presenting his research at the Prince Memorial Library on April 19th.

Councilor Moriarty – None

Chairman Perfetti – None

Councilor Stiles – Congratulation to the Greely Science Team for first place in the State Science Fair.

Councilor Gruber – The Shellfish Commission met last week and discussed the Senior License Fee and Non-resident Senior License Fee. There was a representative from the Department of Marine Resources who said that no town is allowed to charge more than double a resident fee vs. a non-resident fee. Essentially, 2 times zero is zero.

The Commission has agreed to define "Conservation Fee" in the Shellfish Ordinance at the request of the Council.

The Shellfish Commission has submitted a grant application to the Maine State Planning Office for upgrades to access to the clam flats.

Town Manager Shane - None

VI. EXECUTIVE SESSION - pursuant to 1 M.R.S.A., § 405(6)(A) re: Town Manager evaluation and contract renewal.

Motion by Councilor Stiles, seconded by Councilor Copp, to recess to Executive Session - pursuant to 1 M.R.S.A., § 405(6)(A) re: Town Manager evaluation and contract renewal.

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 9:49 P.M.

Motion by Councilor Copp, seconded by Councilor Storey-King, to return from Executive Session.

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 10:27 P.M.

Motion by Councilor Stiles, seconded by Councilor Gruber, to enter into an Employment Agreement between the Town of Cumberland and William R. Shane for a 3-year period beginning April 1, 2012.

VOTE: 7-0 UNANIMOUS PASSAGE

VII. ADJOURNMENT

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

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 10:29 P.M.

Respectfully submitted by:

Brenda L. Moore
Council Secretary