

MINUTES

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, February 22, 2010

7:00 p.m. Call to Order

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

I. APPROVAL OF MINUTES

February 8, 2010

Motion by Councilor Storey-King, and seconded by Councilor Perfetti, to accept the minutes as presented.

VOTE: UNANIMOUS PASSAGE 7-0

II. MANAGER'S REPORT

- Reminder re: absentee voting. Last Thursday we had received 92 ballots and after posting the signs throughout town we have 192. Town Clerk will be here on Saturday for absentee voting from 9 am to noon, and we will allow absentee voting on Monday as well during regular hours.
- Workshop this evening will not likely be held because the agenda appears that it will go beyond 9:00 p.m.
- The council will go through the FY '11 budget in its entirety on Saturday, March 6th. The taxpayers' association asked the council to consider a fifty percent reduction of our police department – similar to a Standish model whereby the county sheriff's office is contracted. The police department budget will be reviewed beginning at 10:00 am.

III. PUBLIC DISCUSSION

David Swan, 16 Hillcrest Drive, indicated he sent a letter to councilors regarding reaching the limit of service level. He asked the council to reduce expenditures by increasing staff health insurance contributions; reorganizing or reduce by 20-30% the fire department, reduce the police department by 30%, and reduce the library department by 20%. He doesn't feel the town council is "doing a bad job" but they "may be misinformed." People are too busy working to attend the meetings. Harland Storey, Middle Road, stated he attended to "answer some of the criticisms I have heard" at the last three council meetings regarding the town manager and town council. The Town Manager is here virtually every day and does not solicit projects, and neither does the council. "It's the public that creates projects. That's the way projects are run." The only project the Town Manager has initiated is the Veterans Monument Committee, and it is "a self supporting endeavor." The informational signs throughout town are "more of a reminder" than informational. Route 88 has had a drainage problem for more than twenty years and "it's time you take care of it. I'm not fond of bikers, joggers or runners, but they're here to stay." School consolidation has not proven to produce savings for this town in his estimation. "Maybe that's where you ought to start looking." There is a sense that the town has to accept the budget sent by the SAD. The June ballot will contain a \$69 million dollar bond issue for the renovation of the Brunswick air base. These referendums impact our taxpayers. Jim Higgins, 22 Hedgerow Drive, Cumberland Taxpayers Association, suggested the budget has grown from \$4 to \$8 million in the last ten years. "We are not 25 cents on the dollar, we are thirty-three percent of the budget" including the county.

IV. LEGISLATION AND POLICY

10 – 016 To hear a report from Gorrill-Palmer Consulting Engineers re: Route 88 drainage/shoulder project. (Special Referendum Election on March 2, 2010)

Town Manager introduced engineers Al Palmer and Tom Gorrill to provide an overview of the project. Al Palmer explained starts at the Falmouth town line and proceeds north to Town Landing road. The project goals are to address existing safety and drainage issues on Route 88 and the adjacent neighborhoods and provide paved shoulders from Falmouth to Schooner Ridge. A characteristic of the project is the downstream impact on the storm water. This project will not require a storm water permit.

General water quality improvements include reducing pollution by curbing roadway in problem areas, eliminating erosion of the roadway shoulders and adjacent properties. Sedimentation is reduced through the use of sediment pumps within the proposed drainage structures. Eight existing cross culverts will remain as is; three will be replaced with same size culvert; three will increase in size; and nine will be abandoned. The following roads will receive connection improvements as follows: 1,060 feet of new twelve inch pip on Route 88 to Falmouth; 3,175 feet of new fifteen to eighteen inch pip on Seacove Road; outfall improvements to Wildwood Boulevard; catch basin modifications to Hallmark Road; and 2,895 feet of new 12 to 15 inch pipe on Town Landing Road. In total, this project creates an increase of only .33 acres of impervious surface. “We’re actually reducing gravel shoulders” by .46 acres for a net loss of .13 acres of impervious surface. Five water quality filters are included to treat .37 acres. They hope to include a bid alternate to increase the water quality filters. Tom Gorrill reviewed his “opinion of cost,” noting it was based on the expected favorable bidding environment. The town should see “quite a bit of work done for your dollar. We’re hoping that we’ll get a better bid than 4.5 million” dollars. By 2015 this project would likely cost \$6.6 million dollars and \$7.8 million in 2020. Bond interest rates are at an historic low. He reviewed PACTS’ policy for collector roadways. To be eligible for funding, a roadway must meet current design standards. The PACTS area encompasses 200 miles of roadway and only 88 miles meet current standards. And, in Cumberland, only Route One and Nine and .28 miles of Tuttle Road meet the PACTS standards. If brought to standard, Route 88 will be eligible for state funding in the future.

Mr. Sherwood, 16 Ole Musket Road, asked what current standards means and what the “basic” improvements are to bring this road up to standards. When was it determined that the town became responsible for state roads. Mr. Gorrill responded that the standards are both state and national and have been in effect “for some time.” They include paved shoulders and drainage standards. Councilor Turner asked for a historical perspective regarding responsibility for repair of the road. The road was built to timely standards and vehicles and safety awareness has changed since “the early seventies.” Maintaining the road is a situation of priorities and it appears to have diminished in priority likely because it doesn’t carry the level of traffic it used to carry. Councilor Moriarty asked Mr. Palmer about drainage improvements on Old Town Road. What’s going to happen if we do nothing there? From Schooner to Old Town Landing Road they propose a series of cross culverts discharging to the rear of Ledgewood properties. Mr. Sherwood replied, “It seems as if the state has chosen...to shrug off the responsibility for Route 88 and pass it on to the towns.” He suggested the town consider a push back to the state for allowing the road deterioration to this extent. Councilor Porter indicated there “has been some push back...and at some point you have to deal with the reality that’s before you.” The analogy of the interstate is that the road does not stop in Cumberland. “We all feel horrible about what’s transpired, the real question is does the road need to be fixed?” Susan Bisbing, Spruce Lane, asked if the 2010 and 2020 costs assume the road will not further deteriorate. “That’s an accurate” assumption” replied Mr. Gorrill. “You will need to do probably a fair amount of work to the surface” in ten years. “That’s a very valid point...that you would have to change the scope a little bit. We were trying to be conservative when we put this together.” Sam York, Fox Run Road, added his belief that

if brought to standard this road could be turned back to the state. Town Manager Shane clarified “the road is still a DOT road” but until it is built to standard PACTS will not invest any money in that road. When improved to MDOT standard, Route 88 then becomes eligible for overlays under PACTS policy. That cost is 80/20 federal/municipal funding. That funding is what Yarmouth received for their Route 88 improvements. We are in a position where this road will continue to deteriorate. The center line joint is breaking apart and accelerated deterioration will occur over the next ten to twenty years. Drainage problems can not be repaired by cold patch or skinny mix. Local roads cost \$400,000 a mile to maintain and these roads are more expensive to maintain. Councilor Storey-King did not want there to be false hope that the state will step in and take care of the road simply because the town has brought the road to standards. Ms. Yavinsky, 16 Ole Musket Road, asked about a Gorrill Palmer slide showing the preliminary opinions of probable construction costs. Municipal pricing model was \$5,165,500 and the MDOT pricing model was \$7,470,000. What has changed to produce the \$4.5 million dollar estimate? There are items for removal if either of these prices prove to be the project cost. Are we committed to staying within the \$4.5 million dollar threshold? Mr. Gorrill responded that the \$5.1 is a blended number and the current estimate of \$4.5 uses the Range Road model. “That’s where we are hoping we will be.” A higher number will require prioritizing options. Ms. Yavinsky then asked the council if they are committed to a \$4.5 million budget. Councilor Perfetti responded that it depends on the proximity of the quote. “I want to wait for the quote so I can make a decision at that time.” Councilor Porter responded that he would “not spend this amount of money and not do the project correctly.” He continues to believe the number will allow for complete repair of the road as planned. “That will be debated when we get to that point.” Town Manager Shane stated the December report included an engineer’s estimate of \$5.2 to \$7 million and he recommended a lower number based on the bidding environment at the time. The Range Road project came under the engineer’s estimate by nearly one half. The budgeted amount allowed the project to be extended. The financing for this project is eligible for federal stimulus dollars which provide financing at between two and three percent. “That’s a million dollars over the course of the project” and these monies expire at the end of December 2010. The Route 88 Yarmouth project is much smaller in scope and much more complex, and “has a lot more deficiencies.” Councilor Storey-King clarified that “pocket parks” are not included in the scope of this project. The project includes protecting a historical marker. Councilor Stiles clarified that Councilor Porter was addressing the question of establishing a larger bonding amount. “We definitely need to correct the drainage down there. Hopefully it will correct the problem we have with clam flats.” Councilor Turner’s perspective is that this project is “a harbinger of what’s to come. The bottom line is we don’t know where we’re at until the bids come in” but he is not interested in spending any more money. “It needs to be done; it’s that simple.” Jim Higgins asked if there is any precedence for spending money on state roads. “Can we just do the shoulders?” In addition to the shoulders there is drainage “and that’s really what most of what this project is. There’s not a whole lot we could cut back.” The pollution problem is fecal pollution and “I don’t think we know where that’s coming from,” added Mr. Higgins. Can you tell me the clam flats will be open if we do this project? Mr. Palmer responded that the issue of the clam flat pollution is “multi faceted.” Urban runoff and sediment transport is a factor having a greater impact on clam flats throughout the state. This project is designed not “to make it any worse...and to stop the urban decline” from the runoff. Mr. Higgins asked if we will we get rid of the paving that is there and address the center line? How will we make that seam better? Mr. Palmer explained it will depend on the bids, but they are hoping to address it with a mastic material to bridge the gap and overlay the roadway. “We would love to grind it down but that would add more cost to the project.” Dave Swan suggested it’s not about whether the road needs to be done - “I’ll agree it needs to be done, but can we afford it?” Rita Yavinsky asked about the membrane and its estimated lifespan. Mr. Gorrill estimates “six to ten years. No matter what you do you’re going to get some cracking.” Mike Lebel, Foreside Road, suggested that “tonight demonstrates the road needs to be repaired.” MDOT came to the town three years ago and stated before they will get involved in repairing this road the town must demonstrate that we have a plan and are interested in maintaining the road. “We have a plan. There’s never been a more favorable

time with respect to bidding estimates. Nobody wants to spend this kind of money but somebody has to

maintain this road. It's going to get worse as we ignore the project." Councilor Stiles explained this project will impact the mill rate by .04 cents. We have reduced expenses every year and eliminated staff by over 20 percent and have increased the employee health contributions. The budget will be reviewed by the Finance Committee in detail on March 6th. Municipal financing is complex and TIF funds are used to pay off TIF bonds. Some of the debt obligation we have acquired is due to the TIF program; however, these taxes allow us to improve infrastructure. As an example, he noted that students are expected to pay for items throughout the school year despite a significant school budget. This project will cost the average home \$30 per year to repair issues that otherwise cost us money each year to address. Councilor Moriarty suggested that if we look back we could pinpoint better economic times, adding, "It's never convenient. It's always gut-wrenching and troublesome. We're dealing with one of the oldest, most historic road in town in a fairly populous existing neighborhood. You've got to take the hand you've been dealt" and do with it what you can "reasonably do financially." To start over again would be so prohibitively expensive that "it would be ludicrous. I'm convinced...that we could do what has proposed has to be done within the range of what we voted on." Bob Heyner, Forest Lake Road, stated did not support the petition question, but supported the group's right to seek an election. Infrastructure is a necessary expenditure. The genesis to the opposition is "some people don't feel like this town is fiscally responsibly run." He noted that no members of this evening's opposition have attended prior year's budget meetings. "In my opinion the town is effectively run. I don't have a problem with it." He was present when the manager indicated real employees would have to be eliminated. "Nobody likes to do that. I think it was really responsible." He encouraged members of the audience to attend the upcoming budget meetings. "My time spent over the budget process made me a believer that the town is managed in a fiscally conservative way. If you have any doubts, show up." Jen Crosby, Sturdivant Road, appreciates the work of the volunteer subcommittee and thanked the council for "giving all of us the opportunity to be here." Jim Higgins suggested to Mr. Heyner that there is a group of taxpayers who feel the town is not run fiscally responsibly. "I have a blueprint" to get us to a \$6 million dollar budget, he added. With \$4.5 million dollars you could pave fifty miles of town roads. I don't think you vote for it" because there are many other town roads that "need a ton of work. It's absurd" to select one project over the many that also need repair. He provided a visual suggesting a per homeowner cost of \$102 for the Route 88 project. "I'd like to get to the bottom of this tonight. I believe this number to be one hundred percent correct." Councilor Perfetti asked about new revenue brought on by new valuation, adding town valuation will continue to grow. "Expenses aren't the only thing that happens in town." The Town Manager stated the impact of a \$300,000 bond is about 25 cents on the mill rate all by itself. We have already done the engineering in year one at a cost of \$200,000. That impact on this year's budget is about four cents in additional monies this year. The Town Manager clarified that reconstruction for a town road is about \$400,000 a mile – it's not a full depth reconstruction. Councilor Porter asked whether Mr. Higgins is arguing to pave roads or save money as the reason not to support this project. Councilor Perfetti indicated, "It's plain that it's not a net increase" to your taxes. Chairman Copp added, "There's no question this is a lot of money" and will produce a high number of bids. He asked to know the names of fifty roads that would be improved by just an overlay. "This is a connector road that has needed this work for years. It's a safety issue, it's a drainage issue." Councilor Stiles added that the town considered building town-wide sewer system years ago, but ultimately chose to reduce the project. "We're living today with that error." Chairman Copp thanked the members of the audience for their participation. Chairman Copp called a ten minute recess at 9:15 p.m. Returned to session at 9:28 p.m.

10 – 017 To hear a report from the Lands & Conservation Commission re: Vernal Pools 2009-2010.

Manager Shane introduced Paul Weiss to provide an overview of the Cumberland Vernal Pools Project. The project began with a grant from the US EPA Wetland Program. Stantec Consulting was hired to review 2006 digital aerial photos of Cumberland to identify potential vernal pools within the town's limits. High resolutions scans were made and 3-d computer was used to digitize the information into a graphical information system called ArcMap. Vernal pools exclude man-made bodies of water; pools that have a permanent flowing inlet or outlet, have viable populations of predatory fish; or are permanent ponds. Only those pools that meet the definition of a "significant" vernal pool are regulated by the State of Maine as significant wildlife habitat. If pools dry up too early they may not be classified as significant.

Councilor Perfetti expressed his appreciation for the "passion" of the committee volunteers and asked, "Why are vernal pools important?" Vernal pools are important because they contain "unique habitat." They serve as a primary breeding habitat for wood frogs, spotted salamanders, blue-spotted salamanders, and fairy shrimp, and provide habitat for other wildlife including several endangered and threatened species. "The more important thing" added Mr. Weiss "is that they're interconnected and intertwined in their habitat. They're an indicator of how healthy our environment is doing. When one goes many others are going and telling you something about what's happening." Commission member Sally Stockwell added the insects, invertebrates and amphibians form the basis of the whole food chain in the forest around these pools. They come to the pools to breathe. They lay their eggs and go back in the forest and are eaten by lots of animals in the forest. "It's like a feeding frenzy" for the animals of the forest. "There's a surprising amount of life that goes on in the pools and that supports the rest of the forest." Councilor Storey-King asked about the 40 landowners who denied access to their property and whether the committee will request access again. If the pools are not documented, then the ownership on identifying the pool falls back on the homeowner. "I don't know if that message is conveyed strongly enough" to the property owners. Paul Weiss added, "It would behoove them to do this because they're responsible" for essentially funding the study themselves, which could involve multiple days and "several thousand dollars." Councilor Stiles asked if the value of the property is lessened by the placement of restrictions. The selection "is suspect in my mind. Large tracts of land like Twin Brooks or Rines Forest are germane." However, he feels the value of private land would be negatively impacted by this designation. Mr. Weiss responded that there are wood lot owners all over Southern Maine with viable lots and identified pools. There have been examples where these regulations are for all of our benefit. Town Manager Shane explained all vernal pools were identified by the state and federal program and we are attempting to clarify that they are vernal pools. We are attempting to be more proactive to protect the significant pools. The state has said they are willing to sacrifice those that are questionable in order to identify those that need to be protected. One study has shown an enhancement to property values. The Town Manager thanked the commission for "the countless hours they put into this research." Councilor Porter described this as "a political flashpoint. There's no downside" to mapping these pools. The worst that can happen is for a homeowner to hire a consultant "to do the same mapping." An opt-out option will be available to homeowner's this year, and they will receive a phone call prior to a visit. The homeowners are encouraged to join the committee during the visits. Next steps include training for new volunteers to be held April 10th at 9:30 a.m. Two more site visits will occur in April/May to each site from last year and some that were missed. Sally Stockwell clarified the state regulation which requires field surveys to determine which pools meet the state criteria for a significant vernal pool. This is meant to "encourage a conversation between the DEP and the landowner or developer. It's not a 'you can't do anything regulation.'" No formal action taken.

10 – 018 To appoint Alyssa Daniels as Economic Development Director.

Town Manager Shane introduced Alyssa Daniels. Alyssa has been worked with the Town Manager to form the Cumberland Business Association (CMBA) and facilitated its first meeting at Val Halla on

February 3, 2010. She is preparing to visit two dozen businesses within the community. Councilor Storey-King asked for a job description for this position. Councilor Porter asked about financing for

this position and was informed this position will be paid through TIF funds, not general operating funds.

Motion by Councilor Porter and seconded by Councilor Turner, to appoint Alyssa Daniels, Esq. as Economic Development Director.

VOTE: UNANIMOUS PASSAGE 7-0

10 – 019 To hold a Public Hearing to consider and act on the road acceptance of Chet’s Way.

Town Manager Shane explained that a final inspection of Jordan Farm Subdivision was made on January 12, 2010 and it was determined that all “punch list items” were completed. During staff review of the mylar drawings, the town discovered that a fifty foot easement being granted to the town for a possible future right-of-way was not properly referenced on the map. This has been corrected a new set of mylars will be sent to the Planning Board on March 16, 2010 as a de minimus change. The Manager confirmed that adequate funds remain in escrow to pave in the spring of 2010 and recommended the town accept Chet’s Way as a public right of way.

Abutter, Peter Bowman, Tuttle Road, asked if an entrance to Chet’s Way could be created at the back of his lot. The Manager explained that this request would require a subdivision amendment. “It would be virtually impossible without starting at the Planning Board level again.” Councilor Porter added that this kind of request is something that we will look to address during upcoming ordinance reviews. If it were at the property line “you wouldn’t even have to ask.” Mr. Bowman stated that he was previously led to believe it was impossible because there’s too much land between his land and the public right of way. A change to the approved subdivision plan requires Planning Board review and public hearing process. Councilor Stiles added his desire to “renew my plea not to accept any new roads.”

Motion by Councilor Porter and seconded by Councilor Moriarty to accept as a town road Chet’s Way off of Tuttle Road, generally described in a deed from Southwoods, LLC, a Maine limited liability company with a place of business in Cumberland, Maine, dated February 3rd, 2010, being the parcel identified as “Jordan Farms Estates” shown and laid out on a plan of Jordan Farm Estates Subdivision prepared by Mitchell and Associates, and further to accept those related easements described in a deed from Southwoods LLC of Cumberland, Maine, dated February 3rd, 2010.

VOTE: PASSAGE 6-1 (Councilor Stiles opposed)

10 – 020 To set May 3 - 7, 2010 as Bulky Waste Pickup week.

Motion by Councilor Stiles and seconded by Councilor Perfetti to set May 3-7 as Bulky Waste Pickup Week.

VOTE: UNANIMOUS PASSAGE 7-0

10 – 021 To hold a Public Hearing to consider and act on amending Section 204.14.4.3 (Industrial District – Side Setback) of the Cumberland Zoning Ordinance as recommended by the Planning Board, and to discuss landscape buffer in zone. ~TABLED TO MARCH 22ND

Motion by Councilor Moriarty and seconded by Councilor Stiles to table this item to March 22nd, 2010.

VOTE: UNANIMOUS PASSAGE 7-0

10 – 022 To set a date of March 8th to hear a report and request from the Greely Tennis Boosters to construct a new tennis court at Val Halla.

Councilor Stiles noted that the Val Halla Board of Trustees met recently and voted 1-5 in opposition to this request. The Greely Tennis Boosters is seeking approval to fund and construct a fifth tennis court on the “parking lot side” of the existing tennis courts at Val Halla. The Val Halla Trustees felt the ideal place for the new court is in closer proximity to the school and felt it important to preserve parking space for golfers. The reason given for requesting an additional tennis court is for utilization during “matches.” Councilor Storey-King questioned whether a tennis representative sits on the Val Halla Board of Trustees. Not in the past eight years. Councilor Perfetti does not think this is “an unreasonable request. They’re paying for it. It seems unfortunate” the board couldn’t work with the boosters. Councilor Porter indicated he has not yet made up his mind. There are a lot of uses that occur at Val Halla. “It’s incumbent upon the group to make their case.”

Motion by Councilor Moriarty and seconded by Councilor Perfetti to set a date of March 8th to hear a report and act on a request from the Greely Tennis Boosters to construct a new tennis court at Val Halla.

VOTE: UNANIMOUS PASSAGE 7-0

10 – 023 To set a Public Hearing date (March 22nd) to consider and act on rezoning the portion of Map R07/Lot 53 from Rural Residential 2 (RR2) to Industrial (I), as recommended by the Planning Board.

Motion by Councilor Perfetti and seconded by Councilor Stiles to set a public hearing date of March 22nd to consider and act on rezoning the portion of Map R07/Lot 53 from Rural Residential 2 (RR2) to Industrial (I), as recommended by the Planning Board.

VOTE: UNANIMOUS PASSAGE 7-0

V. NEW BUSINESS

Councilor Porter – received email from David Swan re: budget cut recommendations - a lot of these suggestions have already been done; email re: chickens; received a phone call from Hillcrest resident regarding deer feeding requesting discussion of an ordinance; Cumberland historical society newsletter is great with lots of historical photos and information.

Councilor Storey-King – congratulations to all the many winter sports teams that competed so successfully this year; a great winter for Greely athletics.

Chairman Copp – reminder regarding special referendum election one week from tomorrow; Saturday absentee hours; Town Manager’s birthday today – wished him a Happy Birthday.

Councilor Stiles – requested revisiting chicken ordinance.

Councilor Moriarty – asked Town Manager to check with Wells regarding their enforcement issues with their deer feeding ordinance.

Town Manager Shane – Public Services employee Dan Burr recently chosen as recipient of EcoMaine’s Eco Excellence award for his work with the town’s compost pile.

VI. ADJOURNMENT

Motion by Councilor Perfetti; seconded by Councilor Storey-King to adjourn.

VOTE: UNANIMOUS PASSAGE 7-0

TIME: 10:55 p.m.

VII. WORKSHOP re: FY '11 Municipal Budget (to be held only if meeting adjourns before 9:00 p.m.)

Workshop not held.

Respectfully submitted,

Nadeen Daniels, CMC
Cumberland Town Clerk