

MINUTES

Cumberland Town Council Meeting
Town Council Chambers

MONDAY, March 27, 2017

5:50 P.M. Nominating Committee Meeting

6:00 P.M. WORKSHOP with Planning Board re: Sign Ordinance

7:00 P.M. Call to Order

Present: Councilors Bingham, Copp, Edes, Gruber, Stiles, Storey-King and Turner

I. APPROVAL OF MINUTES

Motion by Councilor Gruber, seconded by Councilor Stiles, to accept the March 13, 2017 meeting minutes as presented.

VOTE: 7-0 UNANIMOUS

II. MANAGER'S REPORT

Letters were mailed to all residents on the Foreside regarding the Brown Tail Moth spraying program for this year. Residents being asked to opt in or out of the program.

On the agenda this evening is a Contract Zone amendment for Village Green. This is simply a lot line correction to get 100 feet of the landfill property back on Town property.

The Manager presented Lew Incze a Town chair for his many years of service to the Coastal Waters Commission. Lew and his wife will be moving to Harpswell.

III. PUBLIC DISCUSSION

None

IV. LEGISLATION AND POLICY

17 – 036 To hold a Public Hearing to consider and act on repealing and replacing Section 315-63 (Signs) of the Cumberland Code, as recommended by the Planning Board.

Town Manager Shane explained that the recommendations are to accept the Planning Board recommendation, which adopts the entire ordinance except for the EMC messaging section, or the Ordinance Committee's recommendation, which adopts the entire ordinance including the EMC messaging section. Both recommendations are only for the Town Center District (from approximately the Congregational Church to the Credit Union on Main Street). The second piece of this, if the EMC's are approved, would be to include the school property because the PTO, as well as the Congregational Church have both requested an LED sign.

Chairman Turner opened the Public Hearing.

Public Discussion: Doug Currie of 321 Main Street said that there are significant safety concerns with LED signs. The potential consequence is having these signs all along Main Street. He referred to a study in 2009 that was prepared for the American Association of State Highway Transportation Officials.

- There is growing evidence that LED signs increase driver glance direction (distraction).
- Drivers engaging in visually demanding tasks have a crash risk three times higher than attentive drivers.

- A 2010 Transportation Research Laboratory study recommends that drivers do not have 2 or more signs in their field of view at the same time.
- The signs should not be placed near traffic control devices or driver decision and action points.

On Main Street, there are 10 places where signs can potentially be installed and a major intersection (Tuttle Road and Main Street).

- One study found that a driver's "eyes off road" time due to "external to the vehicle distraction" or inattention was estimated to cause more than 23% of all crashes and near crashes that occurred.
- Another study shows significantly longer average glance durations to roadside digital signs than to "baseline" sites and to traditional, fixed billboards, and the researchers suggest all measures of visual glances indicative of driver distraction would prove to be significantly worse in the presence of digital signs, if a full study was to be conducted at night (even more distracting at night).

Mr. Currie asked the Council to consider the safety implications that the scientific research proves. These signs are more distracting than conventional signs. Consider the placement of 10 LED signs along Main Street. He said that if the Council is considering approving this, it should be approved everywhere in Town except Main Street. That is the one place where these safety implications prove it to be the wrong place.

Paul Auclair of Olivia Lane said that most of the studies that he has looked at where safety was an issue, were based on conventional LED signs with a lot of movement, the placement of the sign and the speed limit. At night only the letters are illuminated, not the entire sign.

John Davis of Village Way said that the Church has been a passionate advocate for this request, and he feels that the request is quite minor. He suggested that we put together a master plan of what we want our community center to look like over the next decade. He asked the Council to think about the fact that this may be a small request now, but over time these small requests change. There has been significant change to the character of the center of Town over the past 10 years.

Carolyn Currie of 321 Main Street said that when her family moved to Cumberland 13 years ago, she was excited because it was a wonderful, small New England town. Then the zone changed to mixed-use and designed standards were created. They were promised that it would be a livable, compatible situation for everyone (residents and businesses). She has a restaurant on one side of her home and a dentist office on the other. If there are LED signs at these businesses, perpendicular to the road, she will see them in her windows at night. She realizes that she is only one person, but it is her home. She is also concerned about what it will do to the character of our Town. The Town has a wonderful feel and it is our job to preserve the history of our lovely Town.

Melissa Gattine of 325 Main Street said that her house was on the market 2 years ago when the Town Center plan was established. She then realized that this is her home and community, so they took the house off the market because they wanted to stay here. Is she going to have to look out her windows and see LED signs? She hopes not. This would make her sad. If we allow this, the challenge in the future isn't saying no, it's saying no to allow the rules to be tweaked for some people.

Al Alschuler of Tuttle Road is here this evening because he is a lawyer. He doesn't think that these signs will be all over Town, as many people have stated. The ordinance is limited to very subdued LED signs and they are very expensive. There is one thing that the Town can do to limit the signs, which he feels is constitutional. That is content discrimination. You can allow non-commercial messages and still forbid commercial messages. The Supreme Court distinguishes between commercial and non-commercial speech.

Diane Bennekamper, Minister of the Congregational Church, said that she appreciates all the work that has been done by the Ordinance Committee and the Planning Board to bring this forward to the Town Council. The motivation of the Church to request an LED sign is because they want to provide more of a service to the Town. The Church has many things that go on that are unrelated to their religious service, such as concerts, movies open to the public and events related to Aging in Place. They want to let the public be aware that these events are going on. Things change and the way of communicating changes over time. The cost of the sign is a lot, so the likelihood that they are going to go up all along Main Street, is very unlikely.

Councilor Storey-King asked the Town Attorney to respond to Mr. Alschuler's remarks.

Alyssa Tibbetts, Town Attorney said that while distinction between commercial and non-commercial speech is true, and if she was in a position to have to defend a lawsuit on behalf of the Town with respect to this, she is not confident that those are the basis for a policy decision to discriminate against or for a particular type of sign in this context. In the most recent case law of 2015 (Reed v. Gilbert, Arizona), the Supreme Court said that the Town of Gilbert's sign ordinance, by setting a category of sign, was unconstitutional because it was effectively content based regulation. By categorizing the sign, the ordinance was regulating the message of the sign. It was discussed at length with the Ordinance Committee whether we should take the risk of saying that we are going to allow this type of sign, or these particular types of uses, and then open ourselves up to a challenge from another user who is not within that category.

Jessica Grondin of Cumberland Center, said that the work that has been done to draft an ordinance that would set limits to ensure that the signs will not be distracting, was very well thought out and she is in support of this passing. She hopes that the Council will consider passing it this evening.

Kelly Greenlee said that she appreciates being able to drive through Town and not be attacked by signage. She moved here 4 ½ years and one of the criteria that they had was they wanted to live in a town that did not have a look or feel of a suburb of Boston. To put these LED signs in the middle of Town would be a mistake. We have a beautiful Town that draws people to its charm and we should leave it as the beautiful thing that it is.

Paul Auclair shared the photo below and explained that it is the current sign (on the left) and the proposed new sign. He does not understand how we can be so critical of the difference between the 2 signs.



Ingrid (?) Co-Chair of the PTO explained that the PTO wants to update the sign at the Wilson School. The current sign is a safety hazard to the volunteers that have to change the lettering on it. The PTO voted and approved to pay for a portion of a new sign, and they want to be supportive of a safe and effective communication tool to get messages out to the community of all the things going on at the school.

Andrea Peabbles of 10 Cross Road said that her concerns about LED signs are light pollution, the impact on the night sky, the biological impact on animals and people trying to sleep. There are many studies on these things. As far as activities at the school being advertised, they seem to be very well attended and spreading the word does not appear to be an issue in this Town. She is concerned with the domino effect of more signs and the effect on our Town which is becoming progressively urbanized.

Chairman Turner closed the Public Hearing.

Councilor Bingham said that for full disclosure, he is a member of the Congregational Church, and feels he can render an independent decision on this. With all the safeguards that the Ordinance Committee has built into this, he is not concerned that the impact is going to be as significant as some of the concerns we have heard. He said that from a procedural point, once the discussion is done, he is comfortable with making the motion of repealing and replacing the sign ordinance as recommended by the Ordinance Committee, in the Town Center District.

Motion by Councilor Bingham, seconded by Councilor Edes, to repeal and replace Section 315-63 (Signs) of the Cumberland Code, as recommended by the Ordinance Committee.

Councilor Storey-King said that she has a great deal of heartburn over this. She really wants to make it work for everyone. Paul Auclair has been steadfast in working on this every step of the way with the Ordinance Committee, as has Steve Moriarty. She would like to change the ordinance language to say "EMC signs will be limited to non-commercial use" and take our chances.

Councilor Stiles said that he has heard a lot of good testimony on this. He would like to table this until we can look at one of these signs at night. What we are really dealing with is the lack of knowledge of what they will really look like at night. These signs might be better and less intrusive than an externally illuminated sign.

Chairman Turner said that Councilor Stiles suggestion is a good one.

Councilor Edes said that passing this is not going to make Main Street look like the Las Vegas strip and he takes objection with anyone who thinks that this is a public safety issue. It absolutely is not. He has been in law enforcement for 38 years and not one time in his career has an accident been caused by a sign. He does not believe that there are many businesses who are going to install these signs.

Councilor Gruber said that he tends to agree with Mr. Alschuler. We could accept it and see if any legalities come up. We should make a decision this evening one way or another.

Chairman Turner agreed with Councilor Gruber. He would also like to see a decision made and realizes all the time and hard work that everyone has put into putting this ordinance together. He would also like to table to see a sign at night.

Councilor Copp said that he would like to see a sign brought here by the sign company and put it on display for 30 days. If we could see it for 30 days, we could make an informed decision.

Councilor Storey-King said that she would like to work on this a little more. She wants to investigate the non-commercial use option.

Councilor Bingham withdrew his motion.

Councilor Stiles moved to table this item until such time that the Council has had an opportunity to view an example of a sign for a reasonable period. Councilor Gruber seconded.

VOTE: 4-3 (Bingham, Copp & Edes opposed) MOTION PASSES

17 – 037 To hold a Public Hearing to consider and act on adding MSAD #51 properties (Tax Map U11, Lots 1, 8 & 9 and Tax Map U13, Lot 112) to the Town Center District (TCD) zone, as recommended by the Planning Board.

Motion by Councilor Bingham, seconded by Councilor Stiles, to table.

VOTE: 7-0 UNANIMOUS

17 – 038 To hold a Public Hearing to consider and act on a Contract Zone amendment for Cumberland Foreside Village, as recommended by the Planning Board.

Town Manager Shane explained that the application to include additional housing in Cumberland Foreside Village was withdrawn before it went to the Planning Board meeting, but there were other items that the Planning Board considered: 1) elimination of the trail on the I-295 buffer, 2) the trail along Route One to be built along the right-of-way or up to 25 feet on the existing property, 3) setbacks for lot 9 that were approved by the Planning Board under less restrictive zoning, to be rolled into the CZA with some changes to the setbacks, to be consistent with what was approved originally. The Council asked for additional tree buffering on the 295 side. These are the amendments that are in the CZA and this is the final step in the process.

Chairman Turner opened the Public Hearing.

Public discussion: none

Chairman Turner closed the Public Hearing.

Motion by Councilor Bingham, seconded by Councilor Copp, to approve the Contract Zone amendments for Cumberland Foreside Village, as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS

17 – 039 To consider and act on a Contract Zone Agreement amendment request for Bateman Partners, LLC for Village Green.

Town Manager Shane explained that the lot line of the old demolition landfill is over the agreed upon property line. This Contract Zone amendment is to place the entire demolition landfill site back onto Town property. This is the first step in the Contract Zone process, which will also include a neighborhood meeting, a joint meeting with the Town Council and Planning Board to the Planning Board in April, then back to the Town Council.

Motion by Councilor Gruber, seconded by Councilor Storey-King, to accept the staff recommendation to amend the Contract Zone Agreement for Bateman Partners, LLC for Village Green, and to move forward in the new Contract Zone Agreement process.

VOTE: 7-0 UNANIMOUS

17 – 040 To hold a Public Hearing to consider and act on a liquor license renewal for the Golf Learning Center from April 14, 2017 to April 13, 2018.

Chairman Turner opened the Public Hearing.

Public discussion: None

Chairman Turner closed the Public Hearing.

Motion by Councilor Stiles, seconded by Councilor Bingham, to approve the liquor license renewal for the Golf Learning Center from April 14, 2017 to April 13, 2018.

VOTE: 7-0 UNANIMOUS

17 – 041 To reappoint William Longley as Code Enforcement Officer and Richard Wentworth as alternate Electrical Inspector for the term of April 2, 2017 – March 31, 2018.

Motion by Councilor Bingham, seconded by Councilor Stiles, to reappoint William Longley as Code Enforcement Officer and Richard Wentworth as alternate Electrical Inspector for the term of April 2, 2017 – March 31, 2018.

VOTE: 7-0 UNANIMOUS

17 – 042 To set the week of May 15th - 19th for Spring Bulky Item Pick Up Week.

Motion by Councilor Copp, seconded by Councilor Gruber, to set the week of May 15th - 19th for Spring Bulky Item Pick Up Week.

VOTE: 7-0 UNANIMOUS

17 – 043 To appoint members to vacant board and committee seats.

Motion by Councilor Copp, seconded by Councilor Bingham, to appoint Sally Stockwell to the Conservation Subdivision Committee

Susan Nolde to the Lands & Conservation Commission

Judy Wohl and Tim Nastro to the Lands & Conservation Commission (Forestry sub-committee)

Bill Hansen to the Parks and Recreation Commission

VOTE: 7-0 UNANIMOUS

17 – 044 To appoint Benjamin Burnes and Matthew Merriman as Shellfish Wardens and Harbor Masters.

Motion by Councilor Bingham, seconded by Councilor Stiles, to appoint Benjamin Burnes and Matthew Merriman as Shellfish Wardens and Harbor Masters.

VOTE: 7-0 UNANIMOUS

17 – 045 To set a Public Hearing date of April 10th to consider and act on a Mass Gathering Permit for Binnie Media's Maine Ultimate Yard sale to be held on June 10, 2017 at the Cumberland Fair Grounds.

Motion by Councilor Copp, seconded by Councilor Stiles, to set a Public Hearing date of April 10th to consider and act on a Mass Gathering Permit for Binnie Media's Maine Ultimate Yard sale to be held on June 10, 2017 at the Cumberland Fair Grounds.

VOTE: 7-0 UNANIMOUS

17 – 046 To hear a report from the Tax Collector re: foreclosures.

Motion by Councilor Stiles, seconded by Councilor Copp, to table.

VOTE: 7-0 UNANIMOUS

V. NEW BUSINESS

Councilor Bingham – none

Councilor Gruber – none

Councilor Storey-King – none

Councilor Edes – none

Chairman Turner –none

Councilor Stiles – the Central Fire Station Building Committee has finalized the building plan and the construction budget is where they want it to be. The site excavation and the moving of the house next door will begin the first of April. There will be a groundbreaking ceremony on April 8th at 10:00 a.m.

He thanked those who donated to the 4-H auction to benefit the food pantry.

Councilor Copp – he wants the public to realize what our Police Department deals with. Over the past week, he has towed 3 vehicles where the drivers had federal warrants for their arrests. One was from Massachusetts and the other two were from Connecticut. One of them came to pick up their vehicle and paid the tow bill with counterfeit money. He wants to commend the Police Department for all they do for our community. They do an excellent job.

Town Manager Shane – he got a call from the Superintendent today and he reported that the School Resource Officer position is being recommended to be fully funded in the school budget. It was reported in the Forecaster last week that it would not be.

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

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

VOTE: 7-0 UNANIMOUS

TIME: 8:58 P.M.

Reconvene to regular session at 9:45 P.M.

VII. ADJOURNMENT

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

VOTE: 7-0 UNANIMOUS

TIME: 9:45 P.M.

Respectfully submitted by,

Brenda L. Moore
Council Secretary