

MINUTES

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, June 28, 2010

Call to Order – 6:00 p.m. –

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

Excused: Councilor Perfetti and Porter.

Motion by Councilor Moriarty, seconded by Councilor Copp, to recess to Executive Session pursuant to M.R.S.A. Title 1, §405(6)(E) re: consultation with legal counsel.

VOTE: UNANIMOUS PASSAGE 5-0

TIME: 6:00 p.m.

Motion by Councilor Copp, seconded by Councilor Moriarty, to return from Executive Session to regular session.

VOTE: UNANIMOUS PASSAGE 4-1 (Councilor Stiles opposed)

TIME: 6:47 p.m.

I. APPROVAL OF MINUTES

June 14, 2010

Motion by Councilor Moriarty, seconded by Councilor Copp, to approve the minutes as submitted

VOTE: UNANIMOUS PASSAGE 5-0

II. MANAGER'S REPORT

Project Updates:

- Route 88 – scheduled to begin Tuesday or Wednesday of this week, work will begin on side streets – Town Landing Road will be blocked off during the day only; work will progress to other side streets; won't get to Route 88 until some time in August. All side street work and drainage outlet points will be completed first; still trying to iron out utility conflicts.
- Range Road – Project going well; next 2,000 feet paved Thursday or Friday; water line and drainage work going well, scheduled to be done in August.
- Ultimate Yard Sale was such a huge success that the sponsors have expressed a desire to hold a second event in the fall; he is excited for the fairgrounds; heard nothing but great success stories regarding parking and public safety control during the spring yard sale.
- Heart Safe Community Award – Fire/EMS – he introduced Deputy Chief Nate Schools who shared that he and Captain Bernier went to the Maine State Hall of Flags on May 20th to accept recognition on behalf of the town as a Heart Safe Community – a community that provides CPR training to the public and employees in order to better serve the public; fire vehicles are equipped with an AED and an AED is in most of the police cruisers and public buildings; department also recognized as a Gold Level Community – which is a community that provides round the clock paramedic staffing; this saves lives; a Heart Safe decal will be placed on the town's fire/ems vehicles. Chair Storey-King thanked the department – this is quite an honor; only four communities in the county received this award and Cumberland is one of them.

III. PUBLIC DISCUSSION

Rita Yavinsky, Ole Musket Road, requested an update on the Route 88 project. The Town Manager stated the contractors were informed at the first pre-bid meeting that they could extend the project. "It was totally left up to the individual contractor" as to how to meet a July 2011 termination date. He believes this gave flexibility to the bidders and it ultimately proved helpful to the bidding process and results. Eighty test pit bores have been

performed within the project scope to determine conflicts between mapping and physical locations. As a result of the testing, it was found that five to six conflicts will need redesign. The redesign work will likely be performed over the winter. The Manager explained blue paint marks on the road signify water utility lines. Other color paint marks also exist to represent gas and electrical utilities. Ms. Yavinsky also referred to her earlier remarks regarding council term limits. Chairman Storey-King informed Ms. Yavinsky she would survey the councilors individually to ascertain their position regarding term limits.

IV. LEGISLATION AND POLICY

10 – 084 To hold a Public Hearing to consider and act on annual Victualer’s Licenses for the period of July 1, 2010 – June 30, 2011.

No public comments received.

Motion by Councilor Moriarty, seconded by Councilor Turner, to approve the annual Victualer’s Licenses, pending final inspections by the Health Officer, for the period of July 1, 2010 – June 30, 2011.

VOTE: UNANIMOUS PASSAGE 5-0

10 – 085 To hold a Public Hearing to consider and act on amendments to Section 402.A (Domesticated Chickens) of the Cumberland Zoning Ordinance, as recommended by the Planning Board.

Town Manager Shane noted this proposal has been discussed for some time. The town has proposed an ordinance similar to a Brunswick ordinance which allows up to six chickens on smaller lots as long as the chickens are housed in a penned shelter. The planning board has recommended amendments to the ordinance language.

Susan Gallo, 272 Main Street, is supportive of the amendment. However, she believes six is “a little bit low” for lots less than two acres. Her sister houses three chickens on a city lot in Seattle. “It would be nice if it was a little bit more than six...especially given the mortality of the chicks. She also recommended additional wording to allow chicks to be raised indoors. The chicks must be kept warm for the first five to eight weeks. Referring to Section IV. Chicken Pens, Ms. questioned why the wording “other than chicken wire” was included. She suggested chicken wire is the predominant material used in pen structures, adding, “One inch mesh chicken wire is the best thing to use for chicken pens” because it helps to keep out predatory animals. She requested this section be removed. Stacey Collins, 176 Foreside Road, stated, “I’m pleased to see” this ordinance adopted, explaining she recently moved to Cumberland for its pastoral nature and supports and encourages keeping domesticated chickens.

Councilor Turner responded to remarks regarding keeping chicks in a residence, stating, “Chicks would not be chickens...and common sense would prevail.” He sympathizes with comments regarding allowing more than six chickens per single-family lot. Section IV, Chicken Pens, of the ordinance requires the henhouse and walls to be constructed of sturdy wire fencing “other than chicken wire...” Councilor Moriarty asked Councilor Stiles’ opinion on the appropriateness of chicken wire as enclosure material. Councilor Stiles remarked, “A tighter enclosure is safer for the chickens.” The Town Manager suggested leaving the language as is or taking it out completely. He agreed to work with the Code Enforcement Officer to determine whether the language should be amended. Councilor Moriarty also asked about chicken waste removal point. May a homeowner use the town trash bags to dispose of chicken waste? “Sure” the Manager replied, “It’s expensive” but allowed. Councilor Stiles suggested six laying hens will produce six eggs a day. “That’s quite a few eggs over a week. Our intent is not to create” a retail issue. This ordinance allows chickens to be kept only for personal use. Councilor Moriarty indicated he would vote against the ordinance. Town research shows that as far back as could be determined there has been a one acre minimum in

order to keep chickens. In 1984, the lot size was increased to three acres and decreased to two acres last fall. "My only concern is for the more densely settled areas. I'm not convinced this use is appropriate for more densely settled areas. I hope I'm wrong. I hope there are no problems." Councilor Turner indicated he would have agreed with Councilor Moriarty a number of months ago. However, his lot size is similar to his surrounding neighbors, including tonight's speaker Stacey Collins, whose pens are within a couple hundred feet of his property. "I would have agreed with Councilor Moriarty before I had it in the neighborhood." He has seen no adverse impact from the addition of these chicken pens. Chairman Storey-King noted there is a state trend toward sustainability, including the increased popularity of domesticated chickens.

Motion by Councilor Stiles, seconded by Councilor Turner, to add Section 402.A (Domesticated Chickens) to the Cumberland Zoning Ordinance, and amend the language as follows:

- Change the word "female chicken" to "hen"
- Strike the word "noise" from Section V
- Add the words "including chickens" to Section 402.3 to read "Animals other than horses "including chickens" or household pets may be kept for personal use..."

VOTE: PASSAGE 4-1 (Councilor Moriarty opposed)

10 – 086 To hold a Public Hearing to consider and act on adding Section 402.6 (Deer Feeding and Baiting) to the Cumberland Zoning Ordinance, as recommended by the Planning Board.

Town Manager Shane stated the Planning Board had a "thoughtful and somewhat emotional discussion" during its consideration of this ordinance amendment. Ms. Linda Emery brought this issue forward and has educated the public about lyme disease. Inland Fisheries & Wildlife suggests that the town should expect between 80 and 90% compliance. The Town of Wells has a similar ordinance and has not had any violations or citations to date. Cumberland's Animal Control Officer believes this ordinance will be difficult to enforce; however, he does agree that compliance is likely. Councilor Moriarty noted that two members of the Planning Board shared their personal experiences with lyme disease. He acknowledged the "practical enforcement difficulties, but adoption is not inconsistent with a simultaneous public education campaign."

Peter Bowman, Tuttle Road, asked if Wells experienced "favorable results for less lyme disease. Will this ordinance reduce lyme disease? Can we expect less disease if we do not feed deer?" Ms. Linda Emery of Cumberland Center responded that there is information available from studies conducted in Cape Cod and Southern Maine which show a decrease in deer herds from a "no baiting" policy. "And they did have a considerable drop in lyme disease in that area. My hope for the ordinance...is basically education." Mr. Bowman shared that he has "fed deer just for the fun" of seeing them, whereas "You're baiting them for a reason. I don't have to see why we have to curtail baiting." Councilor Copp remarked, "It is against state law." Ms. Rita Yavinsky asked how many cases of lyme disease we have had in Cumberland and the Manager indicated the town does not have such statistical data. Chairman Storey-King suggested lyme disease is more prevalent in coastal communities. Referencing the Planning Board members, Councilor Moriarty stated, "That's two out of seven. It does seem to be something of increasing prevalence." We know the deer will move about at will, he added. "The idea is that we don't want to attract deer into areas that they might not otherwise come but for the fact that people put out food for them. And, thereby bringing more ticks with them." This is one area we can do something about which will promote public health. Councilor Copp stated he could not support this ordinance. "I think what we need is public education. We do not feed deer but we have deer in our yard. I think this will become an enforcement issue amongst neighbors. There's a whole host of animals that carry ticks." Councilor Turner commented, "We've all agonized over this. The bottom line is that Inland Fisheries & Wildlife says it's not doing the deer a favor to feed the deer. The education is the primary concern of this council. The public needs to be educated to the negatives of feeding deer." People are more likely not to feed deer with the ordinance in place. "I'm also a believer in freedom...without government interference any more than necessary. There are probably people who feel they're doing the deer a favor." He

is personally aware of many cases of lyme disease. "I don't expect the ordinance to get enforced, frankly. I don't think we will be inundated by" complaints of violators, either. "I for one am going to vote for it." Councilor Stiles indicated he does not like to tell residents "what they can't do. I prefer people not to feed deer. I'm just not interested" in creating a non-enforceable ordinance and one "that takes away people's rights." Chairman Storey-King noted, "Pets also get lyme disease. I will support this." Councilor Moriarty responded to Councilor Stiles, commenting, "I don't think we need to or should wait for the state to do something." In practical terms this will get resolved on a neighborhood basis. Chairman Storey-King noted for the record the email opposition received from Mr. Steinman. The Town Manager suggested the council could pass or table the ordinance this evening.

Motion by Councilor Copp, seconded by Councilor Moriarty, to table this item.
VOTE: UNANIMOUS PASSAGE 5-0

10 – 087 To hold a Public Hearing to consider and act on amendments to permitted and special exception uses in all Cumberland zoning districts, as recommended by the Planning Board.

Town Manager Shane described this amendment as "a sweeping change to our ordinances." This removes the duplication of zoning and Planning Board review for site plan projects. A site plan review process was incorporated in the 1970s or 80s and most towns, including Cumberland, did not update their two-step review process. Prior to site plan review, the Zoning Board looked at "all the things the Planning Board does today." In an effort to become "more user friendly" applicants will not need "zoning board and then the planning board" review for "almost the same identical process." Councilor Turner commented, "It may be long overdue. It's a good thing to do this."

Ms. Susan Bisbing, Spruce Lane, asked, "What parts are staying." Councilor Moriarty responded, "In a nutshell a lot of special exceptions are being relocated to permitted uses. It simplifies the process, it shortens it a little bit, but doesn't cut short the integrity or intensity of the review." Councilor Turner suggested this change should make for a "perhaps more just situation as well as more streamlined."

Motion by Councilor Turner, seconded by Councilor Copp, to amend the Cumberland Zoning Ordinance to redefine certain special exception uses to permitted uses in all zoning districts, as recommended by the Planning Board.
VOTE: UNANIMOUS PASSAGE 5-0

10 – 088 To set a Public Hearing date (July 12th) to consider and act on Tax Anticipation Note borrowing.

The Manager indicated the borrowing amount will be "Up to \$3 million for FY '11."

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a public hearing date of July 12th to consider and act on Tax Anticipation Note borrowing.
VOTE: UNANIMOUS PASSAGE 5-0

10 – 089 To set a Public Hearing date (July 26th) to hear a report from the Town Center Advisory Committee and forward same to the Planning Board for recommendation.

Motion by Councilor Stiles, seconded by Councilor Copp, to set a public hearing date of July 26th to hear a report from the Town Center Advisory Committee and to forward same to the Planning

Board for recommendation.
VOTE: UNANIMOUS PASSAGE 5-0

10 – 090 To set a Public Hearing date (July 12th) to consider and act on amendments to Section 204.15.3 Rural Industrial (RI) District of the Cumberland Zoning Ordinance re: lot size requirements, as recommended by the Planning Board.

Motion by Councilor Moriarty, seconded by Councilor Turner, to set a public hearing date of July 12th to consider and act on amendments to Section 204.15.3 Rural Industrial (RI) District of the Cumberland Zoning Ordinance re: lot size requirements, as recommended by the Planning Board.

VOTE: UNANIMOUS PASSAGE 5-0

10 – 091 To set a Public Hearing date (July 12th) to consider and act on amendments to the Cumberland Site Plan Ordinance to incorporate a new staff review component for smaller projects, as recommended by the Planning Board.

Motion by Councilor Copp, seconded by Councilor Stiles, to set a public hearing date of July 12th to consider and act on amendments to the Cumberland Site Plan Ordinance to incorporate a new staff review component for smaller projects, as recommended by the Planning Board.

VOTE: UNANIMOUS PASSAGE 5-0

10 – 092 To hold a Public Hearing to receive a report from the Finance Committee and to authorize the Town Manager to transfer inter-departmental operating funds.

Chairman Storey-King reported on behalf of Finance Chair Perfetti. Chairman Perfetti indicated that the Town Manager must receive council approval to transfer monies between departments. The town council authorized \$256,000 in transfers last year compared to this year's request of \$140,000. The transfer to the general fund will be almost \$412,000 compared to \$344,000 last year and \$375,000 the year before. The council's finance committee recommends approval of the transfer request.

Rita Yavinsky, Ole Musket Road, stated she "had trouble supporting that (Route 88) bond issue" due to the "level of town indebtedness." She wondered perhaps if money will be available from the Route 88 project that could be transferred to cover shortfalls at that time. "The debt service now is almost a million dollars" and continued bonding will cause it "to only increase." She recommended a capital reserve fund or a "pay as you go" philosophy. "I think we need stricter controls. I would reluctantly encourage the council to withhold this until we go through the next budget cycle." This is "not with a reflection on the town manager; just that we need more fiscal control in the town." Councilor Porter arrived prior to the vote at 8:17 p.m.

Motion by Councilor Copp, seconded by Councilor Moriarty, to authorize the Town Manager to transfer inter-departmental operating funds.

VOTE: UNANIMOUS PASSAGE 6-0

10 – 093 To hear a report from the Town Manager re: the sale of 269 Gray Road.

The Garnett property at 269 Gray Road underwent significant upgrades and winterization several years ago, which were paid for by the town and People's Regional Opportunity Program. Mr. and Mrs. Garnett passed away in 2006 and the court subsequently appointed the Town Manager as Executor of the estate. After the Garnett's passing, squatters brought the house to a state of "disarray." The squatters were evicted and the town has repaired the home to a like-new status. The Town Manager showed photographic slides of the reconditioned home, which received new carpeting, painting, heating system, flooring and lighting. There are no new appliances. "We're very pleased with the outcome and feel very confident that we will be able to sell" the home and recover the town's investment of between \$50,000 and \$60,000. The home will be listed for between \$125,000 and \$130,000 in order to recover our investment. The Manager recommended the following timeline: advertise the sale beginning July 5 - minimum bid of \$125,000; bids due August 5th with prequalification letters; a Purchase and Sale and \$1,000 deposit accepted by August 10th; bank commitment due August 12th; and closing within 45 days.

Chairman Storey-King asked if the home has a basement and the Manager explained the home has a “three quarter basement” which has a concrete floor. The area could be used as a dry storage space seasonally and has a bulk head access. Councilor Turner questioned the lot size. “Just under an acre.” Councilor Copp explained this home is the last house on the right before you enter the town of Gray. The Manager commended Public Services Director Chris Bolduc and his staff for their efforts in this repair. No council action requested by the Town Manager.

V. NEW BUSINESS

COUNCILOR COPP – welcomed his new grandson who was born Saturday night at quarter to twelve; approximately 20-30 members play softball at the West Cumberland field on Sunday nights and there are no trash cans to dispose of trash; he asked if trash cans could be placed at the field.

CHAIRMAN STOREY-KING – Southern Maine Community College is offering courses at Greely High School; encouraged residents to check out the new summer library hours; lots of great stuff going on this summer; there is a link on the town’s web page.

COUNCILOR MORIARTY – thanked Terry Maloney-Kelly for her email to the clerk regarding the recent election; Greely High becoming a branch for SMCC will enhance the quality of life in town.

TOWN MANAGER SHANE – Town Hall will close tomorrow at 1:00 for a send off party for Bill Landis at Val Halla.

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

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

VOTE: UNANIMOUS PASSAGE 6-0

TIME: 8:32 p.m.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to return from Executive Session.

VOTE: UNANIMOUS PASSAGE 6-0

TIME: 9:06 pm

VII. ADJOURNMENT

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

VOTE: UNANIMOUS PASSAGE 6-0

TIME: 9:06 pm