

# MINUTES

Cumberland Town Council Meeting

Town Council Chambers

**MONDAY, October 8, 2018**

**5:30 P.M. Nominating Committee Meeting**

**6:00 P.M. Workshop** with Heritage Village (formally Cumberland Foreside Village) re: future development

**7:00 P.M. Call to Order**

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

Excused: Councilor Edes

## **I. CALL TO ORDER**

## **II. APPROVAL OF MINUTES**

Motion by Councilor Bingham, seconded by Councilor Gruber, to accept the September 24, 2018 meeting minutes as presented.

VOTE: 6-0 UNANIMOUS

## **III. MANAGER'S REPORT**

Town Manager Shane said that he will hold his report until new business.

## **IV. PUBLIC DISCUSSION**

Cathy Wright of Skillin Road asked if the Skillin Road site and the proposal to relocate the Public Works garage there has been taken off the table or is the location still being considered.

Chairman Copp responded that it has not been taken off the table.

Mrs. Wright asked why the Council changed their minds on the site near the railroad tracks and Town Forest for the relocation site for the garage.

Town Manager Shane responded that it was decided not to develop that site for the Public Works facility. We also considered senior housing for that site, but the biggest concern was the distance from Tuttle Road and the cost of bringing utilities to the site.

Mrs. Wright said that with the traffic as bad as it is and the lack of parking in Portland, she sees the need in the future for a train depot in Cumberland with train service to Portland.

## **V. LEGISLATION AND POLICY**

### **18 – 130 To make a Town Council Proclamation in honor the 225 anniversary of the Congregational Church in Cumberland.**

Jim Bailinson, moderator of the Congregational Church said this weekend the church is celebrating the 225<sup>th</sup> anniversary of its founding. There will be a harvest supper on Saturday evening and their regular service on Sunday morning. The church values being located in the center of Town, their connection to the community and their collaboration with the Town.

Councilor Bingham read the following proclamation:

Whereas, the Congregational Church in Cumberland has its origin in a revival during the summer of 1791, when there occurred among the people a religious movement of much extent and power; and

Whereas, a Mr. Gregg, and also a Mr. Porter, preached several Sabbaths alternately at this place, then called "Tuttle Road"; and

Whereas, in October, 1792, Mr. Rufus Anderson, a native of Londonderry, New Hampshire, and a graduate of Dartmouth College, then a young man of twenty- nine, began to preach, and continued thus to labor till the close of the year; and

Whereas, in 1791, or early in 1792, a move was made to build a meeting house at this place. On April 3<sup>rd</sup>, 1792, at a meeting of those interested, there was chosen a building committee, consisting of Amos Harris, Israel True, David Prince, Col. Ozias Blanchard, Elijah Tuttle, James Prince, Benjamin Buxton, Nathaniel Blanchard, Jr., Benjamin Sweetser and Nathaniel Merrill; and

Whereas, the house was put up during the summer season of 1792. On January 7<sup>th</sup>, 1793, twenty-nine owners in the house met and formed themselves into a "proprietary" or company, "to carry on and finish the new meeting house now standing"; and

Whereas, members of the First Church, having obtained a dismissal for that purpose, together with Rev. Tristram Gilman, pastor of the First Church, and Mr. Anderson, met on Sept. 3<sup>d</sup>, 1793, at the house of one of their number, Mr. Bethuel Wood, near the present site of Mr. Dunn's store, in North Yarmouth; and after prayer and consultation, they subscribed to a mutual covenant, including a confession of faith drawn up by Mr. Gilman, and thus formed "The Second Congregational Church of North Yarmouth," now the Congregational Church of Cumberland. The original members were Ozias Blanchard, Benjamin Buxton, David Prince, Thomas Pratt, Jacob Black, Stephen Harris, Asa Chase, Bethuel Wood, Jeremiah Blanchard, James Prince, Samuel Bacon, Nathaniel Lufkin, John Shaw, William Hamilton, Nathaniel Blanchard, Jr., Eliab Mitchell; and

Whereas, the house was not completed, however, for some years. On April 8<sup>th</sup>, 1797, a meeting was held to take measures for finishing "the said meeting house," and it was not till October of 1798, that all seems to have been done, and a final settlement of all bills and dues provided for; and

Whereas, in 1820, Maine having become a state, and Cumberland a town, the name of this church was changed to the Congregational Church of Cumberland; and

Whereas, in the summer of 1831 the present meeting house was erected, and was dedicated Nov. 8<sup>th</sup>, 1831; and

Whereas, on the 150<sup>th</sup> Anniversary celebration of the founding of the church, which took place August 29, 1943, many members of the congregation, especially descendants of early parishioners, dressed in costumes of former days. After the morning service, at which Rev. Mr. Busby was the speaker, a social hour was held in the vestry. At the afternoon service, Mrs. Millard Burnell read a history of the church, and Mrs. Harlan Sweetser read a poem, "The Country Church," by a former church member, Miss Nellie Sweetser. The main speaker was Dr. Alexander D. Dodd, of the faculty of Bangor Theological Seminary; and

Whereas, on Feb. 19, 1961, after several years of discussion, the church voted to join the United Church of Christ, a merger in 1957 of the Congregational Christian Churches and the Evangelical and Reformed Church;

Whereas, it was decided to sell the old brick parsonage and buy the Seavey property adjacent to the church, using the house as the new parsonage. The dedication of the new parsonage took place on Oct. 14, 1962, and ground was broken for the new Parish House on Dec. 1, 1963, and the building was dedicated in September, 1964.

Whereas, in keeping with centuries of presence in the community, in recent decades the church has served as the place for Greely Institute graduations, has founded the Cumberland Food Pantry, founded the Cumberland Wood Bank, and provided uncountable gestures of aid to its neighbors,

Now therefore, the recognize and commemorate the 225<sup>th</sup> anniversary of the Congregational Church in Cumberland, the Town Council, hereby proclaims October 14, 2018, as the “Congregational Church in Cumberland Day.”

**18 – 131 To authorize the Town Manager to issue a gift letter for exchange of a release deed for property located at Map R06/Lot 15 (a/k/a Greely Woods).**

Town Manager Shane explained that a little over a year ago, Brad Hilton said that he would be willing to give the Town an easement across his property if the Town would put the two tax acquired properties known as Greely Woods into a conservation easement. During this process, it was discovered that the Town had foreclosed on the wrong property many years ago. We have now untangled the deed and have come to a resolution with the owner. Rick Doane, acting as power of attorney for his family, has agreed to sign a release deed to the Town for exchange of a gift letter per the appraised value of the property and the condition that the property be placed in a conservation easement in perpetuity.

Chairman Copp asked if there is any public comment on this item.  
There was no public comment.

Motion by Councilor Bingham, seconded by Councilor Gruber, to authorize the Town Manager to execute a release deed on the property located off Greely Road Extension, Laurel Lane and Crystal Lane, identified as Tax Map R6/Lot 15 and to further authorize the Town Manager to execute a gift letter in the full amount of the appraised value of \$175,000.00.

VOTE: 6-0 UNANIMOUS

**18 – 132 To hold a Public Hearing to consider and act on adopting a moratorium ordinance regarding medical marijuana retail stores, effective immediately, for a period not to exceed 90 days.**

Town Manager Shane explained that our State Legislature just released new laws in regard to medical and recreational marijuana. The Town currently has no regulations governing medical marijuana retail stores and our existing ordinances are insufficient to prevent the serious public harm that could result from the unregulated development of medical marijuana retail stores. The state allows municipalities to enact ordinances to regulate the retail establishments as a land use. We are requesting a 90 day moratorium in order to get a draft ordinance reviewed by the Ordinance Committee, the Town Council, Planning Board and Board of Appeals.

Chairman Copp opened the Public Hearing.  
Public discussion: none  
Chairman Copp closed the Public Hearing.

Councilor Gruber made the following motion, seconded by Councilor Stiles:

WHEREAS, the Town Council of the Town of Cumberland (the “Town”) makes the following findings:

- (1) The Maine Medical Use of Marijuana Act (the “Act”), codified in the Maine Revised Statutes in Title 22, Chapter 558-C, authorizes registered caregivers to possess, cultivate, and transfer medical marijuana to qualifying patients, as those terms are defined by 22 M.R.S. § 2422; and
- (2) On July 9, 2018, the Maine Legislature enacted PL 2017, c. 452 (LD 1539), *An Act to Amend Maine’s Medical Marijuana Law*, which includes express authorization for registered caregivers to operate retail stores for the sale of harvested medical marijuana to qualifying patients; and
- (3) On July 9, 2018 the Maine Legislature enacted as emergency legislation PL 2017, c. 447 (LD 239), *An Act to Amend the Maine Medical Marijuana Law*, which expressly recognizes municipal home rule authority to regulate registered caregiver operations; and
- (4) The unregulated location and operation of medical marijuana retail stores within the Town raises legitimate and substantial questions about the impact of such activity on the Town, including questions as to compatibility with existing land uses and developments in the Town; the sufficiency of municipal infrastructure to accommodate such activity; and the possibility of unlawful sale of medical marijuana and medical marijuana products; and
- (5) As a result of the foregoing issues, the location and operation of medical marijuana retail stores within the Town have potentially serious implications for the health, safety and welfare of the Town and its residents; and
- (6) The Town currently has no regulations governing medical marijuana retail stores, and existing ordinances are insufficient to prevent serious public harm that could result from the unregulated development of medical marijuana retail stores; and
- (7) An overburdening of public facilities and resources, including public safety resources, is a reasonably foreseeable result of the unregulated location and operation of medical marijuana retail stores in the Town; and
- (8) In the judgment of the Town Council, the foregoing findings and conclusions constitute an emergency within the meaning of 30-A M.R.S. § 4356 requiring immediate legislative action.

NOW, THEREFORE, pursuant to 30-A M.R.S. § 4356, and Article II, § 11 of the Cumberland Town Charter, the Town of Cumberland hereby ordains:

**Section 1. Moratorium.** The Town does hereby declare a moratorium on the location, operation, permitting, approval, or licensing of any and all medical marijuana retail stores within the Town.

No person or organization shall develop or operate a medical marijuana retail store within the Town on or after the effective date of this Ordinance. During the time this Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, any other type of land use approval or permit and/or any other permits or licenses related to a medical marijuana retail store.

**Section 2. Definitions.** For purposes of this ordinance, the term “medical marijuana retail store” means an establishment having the attributes of a typical retail establishment, such as, but not limited to, signage, regular business hours, accessibility to the public, and sales directly to the consumer of the product that is used by a registered caregiver to offer harvested medical marijuana for sale to qualifying patients.

**Section 3. Pending Proceedings.** Notwithstanding 1 M.R.S. § 302 or any other law to the contrary, this Ordinance shall govern any proposed medical marijuana retail store for which an application for a building permit, certificate of occupancy, site plan or any other required approval has been submitted to the Town, whether or not a pending proceeding, prior to the enactment of this Ordinance.

**Section 4. Conflicts/Savings Clause.** Any provisions of the Town’s ordinances that are inconsistent or conflicting with the provisions of this Ordinance are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Ordinance is declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

**Section 5. Violations.** If any medical marijuana retail store is established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance and the Town shall be entitled to all rights and remedies available to it pursuant to 30-A M.R.S. § 4452, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney’s fees and costs in prosecuting any such violations.

**Section 6. Effective Date.** Pursuant to Article II, §11(c) of the Cumberland Town Charter, this Ordinance shall become effective immediately upon its adoption and shall remain in full force and effect for a period of 90 days thereafter, unless extended pursuant to law or until a new and revised set of regulations is adopted by the Town, whichever shall first occur.

**Section 7. Severability.** Should any section or provision of this Moratorium Ordinance be declared by any court of competent jurisdiction to be invalid, such a decision shall not invalidate any other section or provision.

VOTE: 6-0 UNANIMOUS

**18 – 133 To consider and act on a Town Council Resolution requesting that the Maine Center for Disease Control declare a public health nuisance in the Town of Cumberland (and surrounding region) due to brown tail moth infestations.**

Town Manager Shane explained that towns from Falmouth to Brunswick are all working together to pass this resolution. There has not been an outbreak of brown tail moth infestation to this extent since 1915. 64,000 acres of forest have been de-foliated by brown tail moths. Since it is in the best interest of the towns affected to find a solution, we hope that the Council will support the resolution so we can petition the Center for Disease Control to declare a public health nuisance, which will allow us to do a more aggressive spraying program. Residents will still be allowed to opt out if they do not want their property sprayed.

Chairman Copp asked if there is any public comment on this item.  
There was no public comment.

Motion by Councilor Turner, seconded by Councilor Stiles, to adopt the following Town Council Resolution:

**Whereas**, in 2016, 2017 and in the spring 2018 residents in the Town Cumberland experienced significant health concerns from an infestation of Brown Tail Moth caterpillars, and

**Whereas**, this infestation is growing annually in severity and geographic area, and

**Whereas**, the towns and cities in the area of infestation and adjacent areas threatened by the spreading infestation have determined to work collaboratively with County government and other regional units or instruments of local government to consider coordinated and effective measures to control or reduce the human health risks of the

brown tail moth caterpillar problem including, but not limited to a regionally coordinated aerial spray program, and

**Whereas**, the Towns and Cities and County are also considering a collaborative funding effort to provide non-federal match funds for the University of Maine to undertake analysis and assessments of effective and environmentally sound treatment options for municipalities and landowners, and

**Whereas**, such coordination and program efforts will require considerable lead time to provide for public education and notification, development of bid specifications, solicitation and award of bids, and coordination of an aerial spray program and schedule (or other treatment strategies), and

**Whereas**, no local or regional program involving treatment on private lands is legally available to the municipalities or region without a Declaration of a Public Health Nuisance from the Maine Department of Health and such a declaration is desired and requested by the Town Council of the Town of Cumberland,

**Now therefore be it Resolved** that the Cumberland Town Council hereby petitions and requests that the Director of the Maine Bureau of Health declare a public health nuisance condition for the Town of Cumberland for the spring of 2018 and 2019 pursuant to Title 22 MRSA Section 1444.

VOTE: 6-0 UNANIMOUS

**18 – 134 To appoint members to the Lands & Conservation Commission.**

Motion by Councilor Bingham, seconded by Councilor Turner, to appoint the following to the Lands & Conservation Commission:

- Stephen Fitzgerald to the LCC Trails subcommittee
- Jennifer Grasso to the Lands & Conservation Commission
- Steven Knowles to the Lands & Conservation Commission
- Jennifer Taylor to the Lands & Conservation Commission
- Matthew Leclair to the LCC Trails subcommittee
- Gordon Lichter to the LCC Forestry subcommittee

VOTE: 6-0 UNANIMOUS

**18 – 135 To set a Public Hearing date of October 22<sup>nd</sup> to consider and act on a Graveyard/Junkyard permit for Cumberland Salvage.**

Motion by Councilor Bingham, seconded by Councilor Stiles, to set a Public Hearing date of October 22<sup>nd</sup> to consider and act on a Graveyard/Junkyard permit for Cumberland Salvage.

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

**18 – 136 To consider and act on forwarding to the Cumberland/North Yarmouth Joint Standing Committee, the proposal from Integrated Forest Management for a forest inventory of Knight's Pond, as recommended by the Lands & Conservation Commission.**

Town Manager Shane explained that the Towns of Cumberland and North Yarmouth have a Joint Standing Committee that works together on matters concerning the Knight's Pond Preserve. The Lands and Conservation Commission is requesting an inventory be done on the trees and habitat living on the Knight's Pond property and work with the Land Trust to set baselines on the inventory today. The request will be sent to the Joint Standing Committee.

Chairman Copp asked if there is any public comment on this item.  
There was no public comment.

Motion by Councilor Bingham, seconded by Councilor Stiles, to forward to the Joint Standing Committee for action, the recommendation from the Lands and Conservation Commission, authorizing Integrated Forest Management to conduct a ground cover inventory of the Knight's Pond property.

VOTE: 6-0 UNANIMOUS

## VI. NEW BUSINESS

**Councilor Bingham** – he expressed condolences to the Westra family on the passing of Kristin Westra and to Chebeague Island where she was a teacher. The school on Chebeague is the center of island life and with Kristen being one of the two teachers there, they are all struggling with her death.

**Councilor Gruber** – The Aging in Place program had their “Day of Caring” last weekend. Volunteers go around the community and help those in need. We had 4 volunteers on Friday and 22 volunteers on Saturday, who helped 9 residents with chores around their homes.

The annual Aging in Place Forum will be held on Saturday, November 3<sup>rd</sup>.

The Historical Society will hold their general membership meeting on Thursday, October 18<sup>th</sup> at Town Hall. The Town Manager will speak to the group regarding the proposal to move the Historical Society building to the library property.

**Councilor Storey-King** – congratulations to Audrey Hankinson who received her Girl Scout Gold Award for her house numbering project.

She also extended condolences to the Westra family on the passing of Kristen. She encouraged anyone who is struggling to call 211 for help. Everyone should keep an eye on their neighbors and check in on them.

At the last meeting, she voted against the storage unit proposal in West Cumberland. It was on the news recently that they found a body in a storage unit in Augusta. This is an example of why she does not want storage units in Cumberland.

The best record in fall athletics goes to Greely field hockey who is headed to the playoffs.

**Chairman Copp** – at the last meeting a gentleman spoke under public discussion and requested a donation of \$150 for the Archangel Committee Bridges of Friendship Sister Cities Photography Exhibition. Chairman Copp asked the Council if they wanted to donate.

Councilor Bingham moved to make a \$150 donation. Councilor Gruber seconded.

VOTE: 6-0 UNANIMOUS

**Councilor Stiles** – in regard to Councilor Storey-King's comments regarding fall sports, Greely football and volleyball are also doing very well.

The Town Manager did a great job at the 4-H auction and purchased beef and pork for the Food Pantry. Every year, he campaigns to collect just \$10 from 1,000 residents of Cumberland and North Yarmouth for the 4-H auction fund. This year, we did well, but did not meet our goal. He encouraged

everyone to please donate \$10 so we can reach our goal for next year. This helps the Food Pantry and the 4-H kids who raise the animals. It is a great learning experience for them.

**Councilor Turner** – a few weeks ago, we talked about train whistles and railroad quiet zones. He has mixed feelings about quiet zones. He was on Greely Road recently and the railroad crossing lights began flashing. A train went through the crossing very slow and traffic backed up for a long way. As the train approached the crossing, the horn blew 5 times, while traveling at a slow crawl through the intersection. He thought this was a good example of the train conductors not caring about the noise.

**Town Manager Shane** – there will be a joint meeting of the Cumberland Town Council, North Yarmouth Select Board and MSAD 51 School Board next Monday evening at Val Halla.

Last week, we sent a report to the Town of Windham regarding the quarry operation near Forest Lake with some recommendations and additional considerations for them.

- VII. EXECUTIVE SESSION** pursuant to Title 36 M.R.S.A. Section 841(2) to consider and act on an application for tax abatement based on hardship.  
Motion by Councilor Turner, seconded by Councilor Storey-King, to recess to recess to Executive Session pursuant to Title 36 M.R.S.A. Section 841(2) to consider and act on an application for tax abatement based on hardship.  
VOTE: 6-0                      UNANIMOUS  
TIME: 7:52 P.M.

Reconvene to regular session at 8:07 P.M.

Motion by Councilor Bingham, seconded by Councilor Stiles, to table.  
VOTE: 6-0                      UNANIMOUS

- VIII. ADJOURNMENT**  
Motion by Councilor Stiles, seconded by Councilor Storey-King, to adjourn.  
VOTE: 6-0                      UNANIMOUS  
TIME: 8:07 P.M.

Respectfully submitted by,

Brenda L. Moore  
Council Secretary