

MINUTES
Cumberland Town Council Meeting
Town Council Chambers
MONDAY, November 28, 2011
6:00 p.m. Workshop
7:00 p.m. Call to Order

6:00 P.M. Workshop re: Crossing Brook subdivision silent second mortgages.

7:00 P.M. Call to Order

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

I. APPROVAL OF MINUTES

November 14, 2011

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

VOTE: 6-0-1 (Copp abstained)

II. MANAGER'S REPORT

On Tuesday, December 6th at 7:00 p.m. there will be a legislative forum at Town Hall with Senator Dick Woodbury and Representative Meredith Strang Burgess. They will be covering issues of concern to the constituents of Cumberland. The session will be televised live on Channel 2 and the public is welcome to come and ask questions.

There will be a Fire Department pancake breakfast on Sunday, December 3rd from 7 – 10 a.m. at the Middle School. The proceeds will go to the Toys for Tot's program.

III. PUBLIC DISCUSSION

None

IV. LEGISLATION AND POLICY

11 – 178 To hold a Public Hearing to consider and act on the 2012 Shellfish License allocations and to amend the Cumberland Shellfish Conservation Ordinance, as recommended by the Shellfish Conservation Commission.

Shellfish Conservation Commission, Michael Brown reviewed the ordinance amendments as recommended by the Shellfish Conservation Commission. The amendments are mostly housekeeping items, except for the increase in in age for a Senior License from 62 to 70 and charging the \$10.00 conservation fee for the senior license to keep it consistent with our shellfish license fees.

- **Section 105 (Definitions): Senior License:** Resident and non-resident licenses shall be issued ~~at no cost~~ to persons at least ~~62~~ **70** years of age.
- **Section 107 (Harvesting):** In an effort to maintain shoreline stability, shellfish harvesting is prohibited ~~within (2') two feet of eelgrass areas in or adjacent to areas of eelgrass,~~ (Zostera marina) and salt marsh cord grass (spartina alterni flora).

Harvesting of shellfish is only permitted with tools that have equally spaced tines such as a clam hoe or spading fork. Using shovels and garden spades is not permitted since they result in many broken clams.

- **SECTION 108. DESIGNATION, SCOPE AND QUALIFICATIONS**

1. **COMMERCIAL LICENSES:**

- a. **Annual Resident Commercial Shellfish License:**

This license is available to residents and/or taxpayers of the Town of Cumberland and entitles the holder to dig and take two (2) bushels of shellfish per day from the shores and flats of this municipality and reciprocating municipalities in the areas to be designated pursuant to Section 107 of this ordinance. The licensee will maintain an accurate log of the days harvested commercially in his or her required Shellfish Harvesting Log, which is due by June 30th each year to the office of the Town Clerk. ~~The commercial license will revert to a recreational license the remaining days of the calendar year.~~

- b. **Annual Non-Resident Commercial Shellfish License:**

This license is available to non- residents of this municipality and entitles the holder to dig and take two (2) bushels of shellfish per day from the areas designated pursuant to Section 107. The licensee will maintain an accurate log of the days harvested commercially in his or her required Shellfish Harvesting Log, which is due by June 30th of each year to the office of the Town Clerk. ~~The commercial license will revert to a recreational license the remaining days of the year.~~

2. **RECREATIONAL SHELLFISH LICENSES.**

A person holding a recreational shellfish license may not engage in the wholesale or retail sale of any shellfish harvested under that license. Recreational shellfish licenses are not available and not valid for a person who holds a shellfish license issued by the Maine State Commissioner of Marine Resources ~~or a recreational license issued by any other municipality.~~ Resident Commercial or Recreational Licenses may be held by a resident of either the Town of Chebeague Island or the Town of Cumberland as per the July 1, 2007 State Legislature Act of Separation. Cumberland and Chebeague Island residents will be eligible for resident licenses in either or both communities.

- f. **Annual Senior Recreational Shellfish License:** Resident and non-resident recreational shellfish license shall be issued ~~at no cost~~ to persons at least ~~62~~ **70** years of age.

- **SECTION 109. FEES***

1.	Resident Commercial Shellfish License:	\$110.00
2.	Non-Resident Commercial Shellfish License:	\$210.00
3.	Resident Recreational Shellfish License:	\$35.00 Over age 62 is free.
4.	Non-Resident Recreational Shellfish License:	\$60.00 Over age 62 is free.

5. Monthly Recreational Shellfish License: Resident **\$25.00**
Non-Resident **\$40.00**
Over age 62 is free
6. Junior License **\$25.00**

7. Resident & Non-Resident Senior License \$10.00

**each license includes a \$10.00 Conservation Fee*

• **SECTION 114. LICENSE EXPIRATION DATE**

Each shellfish license issued under the authority of this Ordinance expires at midnight on the 31st day of December next following date of issue, unless otherwise specified in this ordinance. **see Section 108(2)(a) & Section 108(3)(e).**

7. **ALTERNATIVE LICENSING PROCEDURES**

In the event that the Shellfish Conservation Commission shall establish that no limit on recreational licenses shall be imposed, the following procedure shall govern the issuance of licenses notwithstanding the provisions of Section 116 (1-4).

• **SECTION 126. APPOINTMENT OF SHELLFISH CONSERVATION WARDEN
COMPENSATION; REMOVAL**

~~The Town Council shall appoint a Shellfish Conservation Warden yearly, and establish the Shellfish Conservation Warden's compensation and, for cause by them declared in writing, after due notice to the officer and hearing, if requested, remove the Shellfish Conservation Warden and appoint another one.~~
The Cumberland Police Department shall be the legal enforcement agency for the enforcement of the Shellfish Ordinance. The Chief of Police shall designate an officer or officers certified by the Department of Marine Resources to enforce violations of the ordinance and conduct required water quality sampling.

Mr. Brown said that the Shellfish Conservation Commission is recommending the same license allocation as last year:

2012 Calendar Year Shellfish Allocation

RECREATIONAL: Unlimited resident recreational licenses
40 non-resident recreational licenses
8 monthly resident licenses
2 monthly non-resident licenses

COMMERCIAL: 5 resident commercial licenses
1 non-resident commercial license

Public discussion: None

Councilor Turner asked why the age increase in the Senior License.

Mr. Brown said that the Commission decided that the age should be consistent with the State Fish and Game licenses.

Motion by Councilor Moriarty, seconded by Councilor Gruber, to set the 2012 Shellfish License allocations as recommended by the Shellfish Conservation Commission, and to amend the Shellfish Conservation Ordinance as attached.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 179 To consider and act on the adoption of a Post Issuance Compliance Policy relating to bonds issued by the Town.

Chairman Perfetti explained that even though this is a current practice of the Town it has to be officially adopted by the Town Council.

Town Manager Shane said that the Town Attorney is required to answer a letter from the auditor each year and this compliance policy will be addressed in that letter.

Motion by Councilor Turner, seconded by Councilor Moriarty, to adopt the Post Issuance Compliance Policy Relating to Bonds Issued by the Town, which is included in the Town Council meeting materials.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 180 To authorize the Town Manager to close on the sale of the Doane Property to Bateman Partners, LLC, pursuant to the Purchase and Sale Agreement.

Town Manager Shane said that the closing on the Doane Property will take place within the next few weeks. The payment structure is \$200,000 at closing and the balance as the individual lots are released and sold. The Purchase and Sale agreement was rolled into the Contract Zone agreement. The Town Attorney suggested that the Council authorize the closing agreement separately as a formality.

Motion by Councilor Storey-King, seconded by Councilor Stiles, to authorize the Town Manager to execute a closing on the former Town owned Doane Property in accordance with the Purchase and Sale and Contract Zone Agreements.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 181 To set a Public Hearing date (December 12th) to consider and act on the Greely High School Swimming Pool License renewal for the 2012 calendar year.

Motion by Councilor Stiles, seconded by Councilor Copp, to set a Public Hearing date of December 12th to consider and act on the Greely High School Swimming Pool License renewal for the 2012 calendar year.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 182 To set a Public Hearing date (December 12th) to consider and act on draft amendments to the Site Plan Ordinance, as recommended by the Planning Board.

Motion by Councilor Copp, seconded by Councilor Stiles, to set a Public Hearing date of December 12th to consider and act on draft amendments to the Site Plan Ordinance, as recommended by the Planning Board.

Chairman Perfetti said that he has questions about the amendments and asked the Manager if this document could be reviewed and discussed in workshop before the next meeting.

Councilor Moriarty suggested a workshop in December 12th, but table any action until January 9th as discussion and further amendments can get confusing in the same meeting.

Motion by Councilor Copp, seconded by Councilor Stiles to withdraw previous motion.

Motion by Councilor Moriarty, seconded by Councilor Copp to table this item and hold a workshop on December 12th.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 183 To set a Public Hearing date (December 12th) to consider and act on draft zoning amendments to add Farm Based Retail to Section 104 (Definitions) and as a permitted use in Sections 204.1.1 Rural Residential One (RR1) and Section 204.1.2.1 Rural Residential District Two (RR2), as recommended by the Planning Board.

Councilor Moriarty explained that this was discussed at the last meeting of the Planning Board. Looking at it in print, the second comma changes the entire meaning of the sentence.

Farm-Based Retail: The selling of agricultural produce or products, the majority of which is grown or raised by the landowner on property owned by the landowner, within the RR1 and RR2 zoning districts.

Between now and the meeting on December 12th he suggested that the Manager review it with the Town Attorney and get his opinion. As it is currently written, it would allow the import of produce grown out of town on property that someone may own, to be sold in the RR1 or RR2 zones. The theory was that someone could have a retail operation in the RR1 or RR2 zone for produce grown and sold within those zones.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date of December 12th to consider and act on draft zoning amendments to add Farm Based Retail to Section 104 (Definitions) and as a permitted use in Sections 204.1.1 Rural Residential One (RR1) and Section 204.1.2.1 Rural Residential District Two (RR2), as recommended by the Planning Board, and further, to authorize the Town Manager to discuss the phrasing of the proposed new use and its proper grammatical construction to reflect the intent of the Planning Board.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 184 To consider and act on cancelling the December 26, 2011 Town Council Meeting.

Councilor Moriarty asked the Manager if there are items to discuss that evening and reminded him that it would be a full month between meetings if the December 26th meeting is cancelled. However, if there is nothing to act upon, there is no need to meet.

Chairman Perfetti said that he and the Manager have discussed this and there are no pressing issues.

Motion by Councilor Turner, seconded by Councilor Stiles, to cancel the December 26, 2011 Town Council Meeting.

VOTE: 6-1 (Storey-King opposed)

MOTION PASSED

Councilor Storey-King said that she opposed because she feels that the Council has to always give the public the opportunity to bring issues forward on a regular basis, and feels that is a little hasty given the amount of work that the Council has to consider on the 12th to cancel the meeting on the 26th.

11 – 185 To hear a report from the Ordinance Committee re: Fireworks Ordinance and to set a Public Hearing date (December 12th) to consider and act on a Fireworks Ordinance.

Councilor Moriarty, on behalf of the Ordinance Committee, explained that the committee has met to discuss a fireworks ordinance and this issue is more complex than it appears to be. There is an existing state statute that deals with fireworks. In the current law and the new law that takes effect on January 1, 2012, there are two categories of explosives: "Consumer Fireworks" (smaller and less explosive) and "Fireworks". It appears that the public understanding is that the state has legalized fireworks generally. This is not accurate because the law that will still be in effect on January 1st will prohibit the use of "fireworks" but will legalize the possession and use of "consumer fireworks". The issue that all municipalities are dealing with is whether or not they should exercise what the legislature created, a local option to limit the possession and use of consumer fireworks. Surrounding towns to the north and south of us have already banned the sale and use of consumer fireworks. Some inland communities are undecided and some others have decided to allow the sale and use of consumer fireworks. The Ordinance Committee has presented a draft of what they feel represents the least interventionist choice for Cumberland and the new state law. The Ordinance Committee recommends it to read: "to prohibit the use or the sale of consumer fireworks within the Town or from any watercraft on the waters within the Town". We now have to understand what consumer fireworks really are and decide if we want to join our neighboring communities in prohibiting the sale and use.

Chairman Perfetti asked Doug Pride to go to the podium to answer any questions that the Council may have.

Mr. Pride explained that the new state law deals only with consumer fireworks. He is of the opinion that Cumberland should do nothing and let the state law take effect. This is a freedom issue. State law will not allow anyone to buy display fireworks unless they are a licensed fireworks user. Consumer fireworks are much different today than they were in the 40's and 50's. They are much safer now. Mr. Pride said that he does not see a need for a fireworks ordinance at this time.

Chairman Perfetti asked Mr. Pride how he would respond to the resident who lives in a congested area with 50 homes whose neighbor is shooting off fireworks and they are concerned that their house may catch on fire.

Mr. Pride said this is a good point and fire is an issue. People have to use common sense and sellers of fireworks are required to pass out safety information to consumers. The law requires that fireworks can only be discharged on one's own property or on other property with permission.

Councilor Copp said that he agrees with Mr. Pride and we should let the state control this. If people can legally buy firecrackers, they will be less likely to attempt to make their own and hurt themselves.

Councilor Gruber said that he agrees that fireworks are safer now than they were in the past. His concern is the potential fire issue and not having some type of control in place to prevent a fire incident.

Mr. Pride said that he has seen very few fires in his experience due to fireworks. He suggested banning fireworks during dry conditions.

Councilor Stiles said that he grew up in the age where he was allowed to use fireworks and enjoyed it. He feels that you cannot legislate against stupidity and if people are careful, fireworks can be safe and fun.

Town Manager Shane advised the Council that if they do nothing and place no restrictions on the use of fireworks, they will be legal from 9:00 a.m. to 10:00 p.m., 7 days per week. On July 4th and New Year's Eve, they will be allowed until 12:30 a.m.

Chairman Perfetti encouraged the Council to draft their own language that they feel should be included in an ordinance so that on December 12th there will be options and discussion.

Councilor Turner said that he agrees with Mr. Pride in terms with this being a freedom issue, but his biggest concern is the noise. He wonders if a middle ground may be restricting the use of fireworks to certain times of the year.

Councilor Gruber said that he would like to see a permit process in place.

Motion by Councilor Moriarty, seconded by Councilor Turner, to set a Public Hearing date of December 12th to consider and act on a Fireworks Ordinance.

VOTE: 6-1 (Stiles opposed)

V. NEW BUSINESS

Councilor Turner – there was an editorial in the Forecaster re: railroad quiet zones and Cumberland’s decision to “put things on hold”. He feels that couple of the statements made in the editorial were inaccurate and should be addressed for the benefit of the public. Sounding of horns at crossings adds one level of safety. Take away the horn and add channelization and gates, this brings the safety level back to somewhere near the safety level with horns. The editorial suggested that it would be 50% safer with channelization than with allowing the sounding of horns and we are disregarding the safety of the public if we don’t consider channelization.

Town Manager Shane explained that scenario is not incorrect. The horns add one level of safety, the gates add another, and when you add channelization, you increase the factor of safety by another 1/3. It becomes a safer intersection with channelization even absent the horns.

Councilor Copp – Falmouth is taking action on Railroad Quiet Zones this evening. It will be interesting to see what they choose to do about this.

There are vacancies on the following Cumberland boards and committees:

Board of Sewer Appeals
Coastal Waters Commission
Cumberland Energy Advisory Committee
Lands & Conservation Commission
Personnel Appeals Board
Rines Property Citizens Advisory Committee
Shellfish Conservation Commission
Twin Brook Facility Advisory Committee

Anyone who is interested can call Town Hall and talk to Brenda or if you are currently serving on a committee and could like to continue, please contact Brenda.

Councilor Storey-King – a good friend of her family and a good friend of the community passed away last week. Tom Joyce was the principal at Greely Junior High School for over 30 years. Tom’s passing is not only a loss to educators, but also to the community. There will be a memorial service for him on November 29th from

11:00 a.m. to 1:00 p.m. at the Lindquist Funeral Home in Yarmouth. Councilor Storey-King asked the Council to consider naming the access road to Greely Middle School after Tom.

Town Manager Shane explained that the difficulty with the Middle School access road is that it is not a public street. There is no formal process to do this and it would be the Council's decision to pursue it or not.

Councilor Moriarty – thanked the Public Works Department for preparing the race course with sand and salt on Thanksgiving morning. The race had well over 300 finishers with no injuries on that very icy morning. Thank you also to the Police Department and volunteers for all their help.

Chairman Perfetti – none

Councilor Stiles – reminder to residents that deer hunting is still in effect for 2 more weeks. Please be careful and wear orange if walking in wooded areas.

Councilor Gruber – The Lands and Conservation Commission is in great need of new members.

Town Manager Shane – December 12th meeting topics:

- a) To hear a report from Public Services Director, Chris Bolduc re: Town Roads
- b) To hear a report from the Cumberland Energy Advisory Committee re: home energy efficiency
- c) Nominating Committee appointments
- d) To hear a report from the Lands & Conservation Commission re: selective harvesting in the Town Forest
- e) Bath Salts presentation by Officer Ryan Martin.

VI. ADJOURNMENT

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

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 8:27 p.m.

Respectfully submitted by,

Brenda L. Moore
Council Secretary