

MINUTES

Cumberland Town Council Meeting
Town Council Chambers

MONDAY, August 8, 2011

6:00 p.m. Growth Ordinance & Impact Fee Committee Meeting

7:00 p.m. Call to Order

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

I. APPROVAL OF MINUTES

July 25, 2011

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

VOTE: 7-0 UNANIMOUS PASSAGE

II. MANAGER'S REPORT

- **Cumberland Train Crossing**

The upgrades to train crossings for the addition of Amtrak runs to Brunswick are scheduled to begin in September. Municipalities are allowed to petition for "quiet zones" if they choose to do so. Quiet zones are crossings where train whistles will not blow. Currently, trains pass by Tuttle Road 13 times per day and the schedule for next summer will be three additional, round trip passenger trains.

Town Manager Shane asked the Council if they would be interested in a presentation and gathering of more information on the cost of implementing quiet zones. He said that he had many phone calls regarding this issue (equal number for and against quite zones). In discussions with other Town Managers, it appears to be a difficult process to implement quiet zones.

Chairman Perfetti said that the felt that the Council would be amenable to hearing any information that the Manager can gather so they can make an informed decision. There is a balance between the quite enjoyment of your home and safety.

Councilor Turner asked what the alternative to the whistle is. What do the trains do when they enter a quite zone? Do they change speeds?

Town Manager Shane responded that the trains will be going through crossings at 40-50 mph, with no warning whistle, just closed crossing gates.

Chairman Perfetti referred to a letter that stated that quiet zones do not prohibit the use of a whistle. If the conductor needs to use it, he will use it.

Town Manager Shane will contact the Railroad and request a public presentation to gather more information regarding our community implementing or not implementing quiet zones.

- **Then and Now Photos**

Library Director, Thomas Bennett has put together quite a few photos of Cumberland structures, then and now. They will be on display at Town Hall by Election Day

III. PUBLIC DISCUSSION

Dan Burr, 248 Middle Road, whose property is adjacent to the new CMP substation. They have been blasting at the site since March 3rd of this year, 2-3 times per day, almost every day. Approximately 2 months ago, he began to notice that the water in his house was brown with sediment in it. Mr. Burr contacted Drew McMullan (CMP Public Relations) to report the problem. CMP brought the Burr's bottled water. The explanation that CMP gave Mr. Burr was that the blasting likely shook the well casing and the problem should go away when blasting is complete. Mr. Burr said that CMP has tested the water, but he and his family is not comfortable and will not drink it. He feels that it won't clear up on its own. Mr. Burr asked Mr. McMullen about the possibility of being hooked up to town water and respectfully requested that the Town work with CMP to see if this is an option.

Chairman Perfetti said that the Council has a lot of questions regarding the situation on the Burr's behalf and asked the Manager if there are mechanisms in place for this situation.

Town Manager Shane said that there is a bond in place to restore or extend water to residents who are adversely impacted by the project. The Manager has contacted CMP and asked them what the impact to the Burr's is, if they can expect their water to be as good as it had been, and to respond to these questions in a timely fashion. If the answers are no, the Town will request an extension of the water main. If the answer to a new water main extension is no, then the Town will exercise the letter of credit to extend the water main to the Burr's property.

Julie Ferland, 13 Muirfield Road, said that she and her neighbors discovered over a year ago that the Downeaster would be coming through Town and they began doing their research. Another option that can be looked into are wayside horns, which is a directional horn that can be installed at the crossing. The neighborhoods cannot hear wayside horns, but anyone directly at the crossing can hear it. Ms. Ferland said that in 2003, MDOT did authorize a quiet zone at the Muirfield crossing. However, it never got federally recognized. She requested that as the Town moves forward on this, they are sure that every step is taken to completion.

Susan Thomas, Mere Wind Drive, said that she just learned about quiet zone train crossings yesterday in the newspaper. She had never heard anything about increased train traffic or the possibility of a quiet zone. Her concern is that this has slipped under the radar, and even more concerned to hear the Town Manager say that we may not have enough time to get the information, have a public hearing, and do the due diligence that we need to give it going forward.

Chairman Perfetti responded that the railroads are not obligated to inform municipalities of what they plan to do, so the Council has not been privy what has happened. There has been a lot of buzz in the media about the Downeaster, but it's a case of (not intended negatively) "if it's not in my backyard"... In regard to the fact that we may not have time, he asked Mrs. Thomas to give the Council a chance to get the information.

Town Manager Shane said that he was surprised about the reaction to quiet zones because of the low density and low population around Cumberland railroad tracks, in comparison to metropolitan areas such as Portland. It will likely be difficult sell to get the quiet zones, and then how do we pay for them? The second part is the

people who use the railroad tracks for recreation. While it is technically trespassing, people do it and how is that going to be enforced? The train whistles give those people warning well in advance of reaching the crossing. It will be a bureaucratic process to get this to happen, and the DOT was very clear about the fact that quiet zones in Cumberland will be highly unlikely. However, we will get them here, listen to what they have to say, and see what the next steps are.

Councilor Stiles suggested residents contact our State Senators with their concerns around this issue.

Councilor Storey-King said that there will be some passion around this issue. Several years ago, there were two young gentlemen from this community who were killed in a railroad crossing accident in Falmouth.

Sarah Steinberg, Turnberry Drive, agreed with Ms. Ferland that their neighborhood has been actively involved in this issue. Her concern is that the public hearing will be with only the Railroad who has a vested interest not to do this. She thinks that our Senators and the Federal Railroad Administration should also be involved because the FRA are the only ones who have the power to allow quiet zones. Ms. Steinberg said that the trains are going to be round trip (6 trips per day), going close to 68 mph, with 4 whistles every time they cross.

Councilor Moriarty asked for clarification regarding the number of whistles per day going through Cumberland crossings.

Ms. Steinberg said that with the freight trains and passenger trains combined, they roughly calculated approximately 80 whistles throughout the day and night, every day.

IV. LEGISLATION AND POLICY

11 – 131 To hold a Public Hearing to consider and act on a Mass Gathering Permit and Victualer's Licenses for the 140th Cumberland Fair to be held from September 25 – October 2, 2011 at the Cumberland Fairgrounds.

Town Manager Shane said that staff is recommending approval and all insurance certificates have been received.

Public discussion: none

Motion by Councilor Copp, seconded by Councilor Moriarty, to approve the Mass Gathering Permit and Victualer's Licenses for the 140th Cumberland Fair to be held from September 25 - October 2, 2011 at the Cumberland Fairgrounds.

VOTE: 7-0 UNANIMOUS PASSAGE

11 – 132 To hold a Public Hearing to consider and act on amending Section 204.8.1.15 of the Cumberland Zoning Ordinance to delete Retail as a permitted use in the Office Commercial South (OCS) Zone, as recommended by the Planning Board.

Councilor Moriarty recapped that in late winter, early spring of last year the Planning Board undertook an extensive assessment of the Zoning Ordinance with the intent of moving a number special exception uses in zones town wide, into the category of permitted uses. By clerical error, the permitted use of Retail Store was listed in the Office Commercial South Zone, never having previously been a special exception. The Planning Board meeting minutes of May 2010 do not reflect any discussion on that point, and the two members of the

Planning Board who were present at the May 2010 meeting had no recollection of it being discussed. When the Planning Board memo came to the Council recommending the changes, there was no discussion or mention of the Retail Store as a new permitted use in the zone. When this issue was discovered, the Council passed a 90 day moratorium in June to allow time to correct the oversight. It has been to the Planning Board and by a 5 to 1 vote, they recommended that Retail Store be deleted as a permitted use in the OCS zone. This is not to imply that retail could never, at some future point, be considered an appropriate use in that zone, but we're moving right now toward a high-end, high-tech business park. This is the direction that we want to continue to move toward, and not see those limited number of available spaces scooped up by retail which don't offer the Town the same advantages in terms of tax revenue and higher paying jobs.

Public discussion: none

Councilor Storey-King asked what if we have these great office-type businesses there and a business such as the European Bakery decides they want to move down the street to that location. She understands that this only affects 8 lots, but what if one of the office buildings has space for a coffee shop. By what means could that happen?

Councilor Perfetti said that by passing this and making it what we want it to be does not preclude us from ever having retail in that area either by changing the zone or by contract zone.

Councilor Moriarty said this simply takes us back to square one. The residents were never notified that Retail Stores was a consideration in that zone, they weren't invited to a meeting to discuss the option. There is and would be a very vocal opposition to retail in that area. This snuck in under the radar and it does not restrict any resident, a member of the Council or Planning Board to bring the matter up at a later date.

Town Manager Shane addressed Councilor Storey-King's question, what happens if? On the fast track, it would take about 45 days to go before the Planning Board and Council. Associated Retail is still allowed in that zone. Restaurants and cafes are not permitted in the zone now. Retail would be a hardware store, pharmacy, etc.

Motion by Councilor Moriarty, seconded by Councilor Turner, to amend Section 204.8.1.15 of the Cumberland Zoning Ordinance to delete Retail as a permitted use in the Office Commercial South (OCS) Zone, as recommended by the Planning Board.

VOTE: 6-1 (Storey-King opposed) MOTION PASSES

11 – 133 To set October 17 – 21, 2011 as Bulky Waste Pick-Up Week.

Town Manager Shane said that Public Services Director, Chris Bolduc, has prepared information that will be mailed to residents reminding them that the intention is to dispose of oversized items, not everyday trash. More information will be coming in September to stress the intention of bulky waste week and what will and will not be accepted.

Motion by Councilor Storey-King, seconded by Councilor Gruber, to set October 17 - 21, 2011 as Bulky Waste Pick-Up Week.

VOTE: 7-0 UNANIMOUS PASSAGE

11 – 134 To hear a report from the Finance Committee Chair re: FY'11 4th quarter financials.

Finance Director, Alex Kimball reviewed the following information for the Council:

Fiscal Year 2010-11 Final Budget Report

**TOWN OF CUMBERLAND
YTD Expense Report
Through June 30, 2011**

Department	2010-11		2009-10	
	Budget	YTD Expenses	Used	Used
General Administration	\$ 1,078,436	\$ 1,025,234	95.1%	103.4%
Public Safety	\$ 1,792,273	\$ 1,824,806	101.8%	104.8%
Public Works	\$ 1,626,002	\$ 1,589,136	97.7%	100.0%
Parks & Recreation	\$ 624,231	\$ 654,981	104.9%	109.5%
Library	\$ 353,580	\$ 351,995	99.6%	102.5%
Other Expenses	\$ 303,049	\$ 341,698	112.8%	102.8%
Controllable Expense Total	\$ 5,777,571	\$ 5,787,850	100.2%	103.5%
MSAD & Other Expense Total	\$ 14,039,554	\$ 14,040,679	100.0%	99.8%
All Expenses Total	\$ 19,817,125	\$ 19,828,529	100.1%	100.9%

General Fund Overall Budget vs. Actual

	Budget	Actual	%	Over/Short
Revenues				
Property Tax Revenues	\$ 16,801,840	\$ 16,794,128	100.0%	\$ (7,712)
Non-Prop Revenues	\$ 3,585,533	\$ 3,616,336	100.9%	\$ 30,803
Total Revenues	\$ 20,387,373	\$ 20,410,463	100.1%	\$ 23,090
Expenses				
Controllable Expenses	\$ 5,777,571	\$ 5,787,850	100.2%	\$ 10,279
MSAD & Other Expenses	\$ 14,039,554	\$ 14,040,679	100.0%	\$ 1,125
Total Expenses	\$ 19,817,125	\$ 19,828,529	100.1%	\$ 11,404
Net Effect				\$ 11,686

A good year for expenses

Expense Comparison

Fiscal Year	Budget	Actual	%	Overage
2010-11	\$ 19,817,125	\$ 19,828,529	100.1%	\$ 11,404
2009-10	\$ 18,940,818	\$ 19,112,056	100.9%	\$171,238
2008-09	\$ 18,348,840	\$ 18,478,284	100.7%	\$129,444
2007-08	\$ 18,891,217	\$ 19,333,933	102.3%	\$442,716

Revenues Through 06/30/11

Description	Budget	2010-2011 Actual	Percent Collected	2009-10 %
Misc Revenues	\$ 2,418,786	\$ 2,467,600	102.0%	97.8%
Dept Revenues	\$ 1,126,747	\$ 1,112,375	98.7%	101.4%
Total Revenues	\$3,545,533	\$ 3,579,975	101.0%	98.9%

Selected Revenue Lines	Budget	Actual	10-11	09-10
Excise Tax	\$ 1,330,446	\$ 1,361,439	102%	104%
Building Permits	\$ 35,000	\$ 34,185	98%	110%
State Revenue Sharing	\$ 500,000	\$ 558,723	112%	87%
Summer Recreation	\$ 192,055	\$ 146,792	76%	98%
Bags/Universal Waste	\$ 325,000	\$ 282,515	87%	91%

Property Tax collections have stabilized

Property Tax Collections through 6/30

	2007-08	2008-09	2009-10	2010-11
Tax Commitment	\$ 15,762,627	\$ 15,901,519	\$ 16,612,279	\$ 17,647,491
Taxes Collected	\$ 15,467,859	\$ 15,588,250	\$ 16,340,683	\$ 17,373,826
Percent Collected	98.13%	98.03%	98.37%	98.45%
% Difference		-0.10%	0.34%	0.08%
\$\$ Difference		\$ (15,904)	\$ 55,675	\$ 14,856

Councilor Storey-King asked Mr. Kimball how many taxpayers have not paid their taxes this year.

Mr. Kimball responded that 73 have yet to pay. Cumberland is 3rd or 4th in tax collection compared to comparable communities.

11 – 135 To hear a report from the Town Manager re: FY’12 sewer user fees.

Town Manager Shane said he is pleased to announce that he is recommending no increase in sewer user fees this coming year. It was a very good year for revenue collection in excess of expenses. Our sewer fund is in much better shape than it was 5 years ago. Things are going in the right direction.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to maintain the current sewer user rate for FY’12.
VOTE: 7-0 UNANIMOUS PASSAGE

11 – 136 To set a Public Hearing date (August 22nd) to consider and act on a permit request by the Greely Football Boosters Club to hold a bonfire at the Twin Brook Recreation Area on Thursday, October 20, 2011.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date of August 22nd to consider and act on a permit request by the Greely Football Boosters Club to hold a bonfire at the Twin Brook Recreation Area on Thursday, October 20, 2011.

VOTE: 7-0 UNANIMOUS PASSAGE

11 – 137 To set a Public Hearing date (August 22nd) to consider and act on a Mass Gathering Permit and Victualer’s Licenses for Nassau Broadcasting for Maine’s Ultimate Fall Yard Sale to be held at the Cumberland Fairgrounds on Saturday, October 15, 2011 from 9:00 a.m. to 2:00 p.m.

Motion by Councilor Copp, seconded by Councilor Stiles, to set a Public Hearing date of August 22nd to consider and act on a Mass Gathering Permit and Victualer's Licenses for Nassau Broadcasting for Maine's Ultimate Fall Yard Sale to be held at the Cumberland Fairgrounds on Saturday, October 15, 2011 from 9:00 a.m. to 2:00 p.m.

VOTE: 7-0 UNANIMOUS PASSAGE

V. NEW BUSINESS

Councilor Turner – The nominating committee met with Mark Lapping earlier this evening regarding his interest in filling an opening on the Prince Memorial Library Advisory Board.

Motion by Councilor Turner, seconded by Councilor Moriarty, to appoint Mark Lapping to the Prince Memorial Library Advisory Board.

VOTE: 7-0 UNANIMOUS PASSAGE

Councilor Copp – Expresses his condolences to the Ward family for their loss. Bill was a valued resident of the town and a good businessman. Our thoughts are with them.

Councilor Storey-King – Echoed Councilor Copp’s sentiments. Bill Ward was well known for his common sense.

Dana Rogers, Kevin Thibeault, Brian Dolot, and Devin Rogers are all entering the military. She sent her thanks to these four individuals for entering the military right out of high school and requested the assistance of the Manager to arrange for Blue Star Banners for their families.

Councilor Moriarty – He also wants to recognize Bill Ward’s service to the community. Bill served many years as a member of the Planning Board, most recently as Chairman. He will be missed.

Barry Wilcox, a former member of the School Board also passed away recently. Barry also served on the Val Halla Board of Trustees. Another person who served the community well and he too will be missed.

Chairman Perfetti – Sent condolences to the Ward family. In working with Bill while he was on the Planning Board, Councilor Perfetti always found Bill to be quite capable at what he did. Bill had a depth and breadth of interests, and things that he liked to do. It goes to show you how much more we are than what we do here. It was clear that he was loved and that he loved his family. He will be missed.

Councilor Stiles – There was an article in the paper that mentioned Cumberland saving money on refinancing a bond recently. He asked the Manager if that is the only bond that the Town can refinance and take advantage of the savings.

Town Manager Shane responded that he and the Finance Director reviewed the entire list for any that were potentials for refinancing. The Senior Housing Bonds were the only ones that could be refinanced.

Councilor Stiles reminded the Manager that the Council has to act on an amendment to the Val Halla bylaws to change the number of trustee/board members allowed. He requested that it be put on the August 22nd agenda.

Councilor Gruber – Referring to the bond refinance article that Councilor Stiles mentioned, other recent articles have included the legalization of fireworks and the quiet zones. This shows that the Manager is on his toes.

Route 88 looks great. It needs a little tweaking, but it’s a breath of fresh air driving down that road now.

Town Manager Shane – Referred to a map in the Council packets that depicts the 2 mile sidewalk loop that is anticipated with the Bateman project. Once the DEP permits have been issued, the project will go before the Planning Board for final approval. The sidewalk loop will be a great addition to the community.

The Growth Ordinance and Impact Fee Committee met for the first time this evening with the Town Attorney. Staff is currently working on revisions and the Committee will meet again to review the revisions and look at what the next steps are.

VI. ADJOURNMENT

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

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 8:37 P.M.

Respectfully submitted by:

Brenda L. Moore
Council Secretary