

MINUTES
Cumberland Town Council Meeting
Town Council Chambers
MONDAY, APRIL 25, 2011
6:00 p.m. Call to Order

6:00 p.m. Call to Order

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

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

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 6:01 p.m.

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

VOTE: 7-0 UNANIMOUS PASSAGE

TIME: 6:54 p.m.

I. APPROVAL OF MINUTES

April 11, 2011

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

VOTE: 7-0 UNANIMOUS PASSAGE

II. MANAGER'S REPORT

Nomination papers are due May 2nd for Town Council and School Board seats.

The State Fire Marshall's Office had a training exercise last week that involved detonating fireworks in West Cumberland. It was much louder than expected and Fire Chief Small ordered the exercise be shut down when he realized this. The neighbors had been notified that this would be going on, and the Manager apologized for the noise and inconvenience this may have caused the neighbors.

III. PUBLIC DISCUSSION

None

IV. LEGISLATION AND POLICY

11 – 065 To hold a Public Hearing in compliance with Article X, Section 2 of the Cumberland Town Charter regarding the petition to enact an amendment to the Cumberland Zoning Ordinance to delete excavation of land as a permitted use in the RR1 and RR2 zones.

Councilor Moriarty gave the following historical explanation in reference to this item:

When the Charter was adopted in 1972, it had a provision for a referendum to overturn action taken by the Town Council, but there was no means in which residents could propose an ordinance change on their own. A Charter Commission was formed in 1994-1995. The Commission inserted a provision entitled the "Initiative Provision", which allows residents to propose ordinance changes or enactment of an ordinance, with the sufficient number of signatures on a petition. When that happens, the proposed changes can go to a public vote. This upcoming election marks the first time, since the Charter was changed in '95 that this has ever been

utilized. Councilor Moriarty commended the petitioners for becoming aware of their rights and for exercising their rights under the Charter.

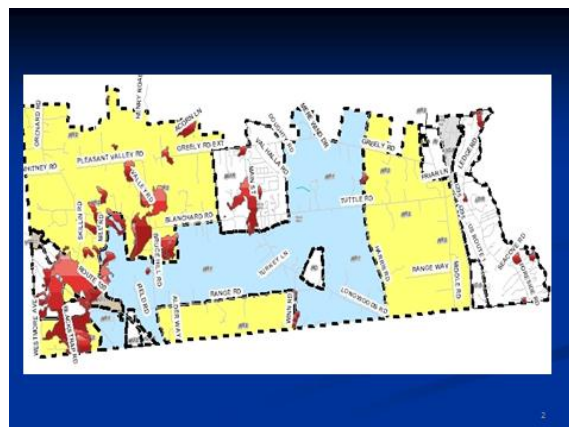
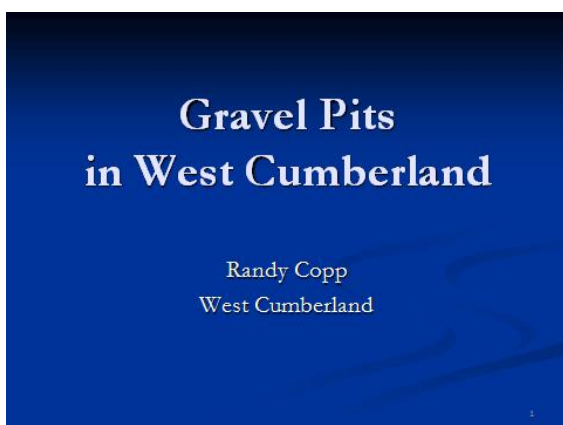
Councilor Moriarty went on to explain that an election date of June 14th will be set this evening. This action stems from the moratorium that the Town Council adopted last November to bring a halt to extraction of earth materials, for a period of at least 6 months, while studying the continuing viability of earth materials as a permitted use in the RR 1 and RR2 zones. There were multiple meetings of the Town Council Ordinance Committee, whose recommendation to the Council was to allow extraction of earth materials as a permitted use, but with the protective mechanism of a contract zone. This issue was then referred to the Planning Board. On March 31st, the Town Clerk certified the minimum number of petition signatures necessary to trigger an initiative referendum under the Town Charter. The Charter requires that within 30 days of certification, the Council has to hold a Public Hearing on the proposed ordinance change (which will take place this evening). Within 30 days of tonight's Public Hearing, an election date has to be set. The election date will be set for June 14th immediately following the Public Hearing and everyone who wishes to speak has had an opportunity to do so. The proposed change is to amend the Cumberland Zoning Ordinance in two areas by deleting extraction of earth materials as a permitted use in the RR 1 and RR2 zones. The issue will be resolved on June 14th by a simple majority vote. If the vote is in the affirmative, under the Charter, the ordinance change will take effect in 10 days (June 24th), which is 4-5 days before the moratorium expires. If the vote is not successful at the polls, the Council will likely, at its June 27th meeting, take up the issue of whether to add a contract zoning provision to the extraction of earth materials as a permitted use in the two zones.

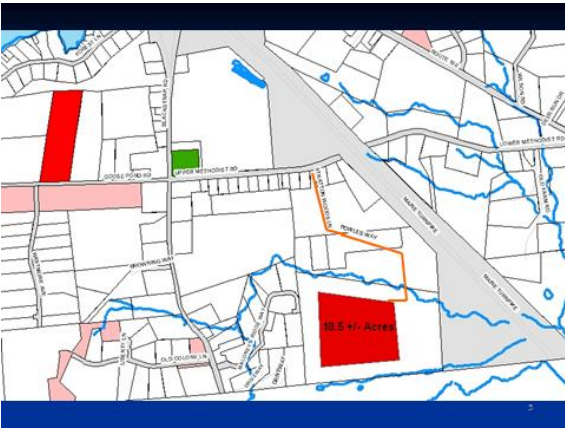
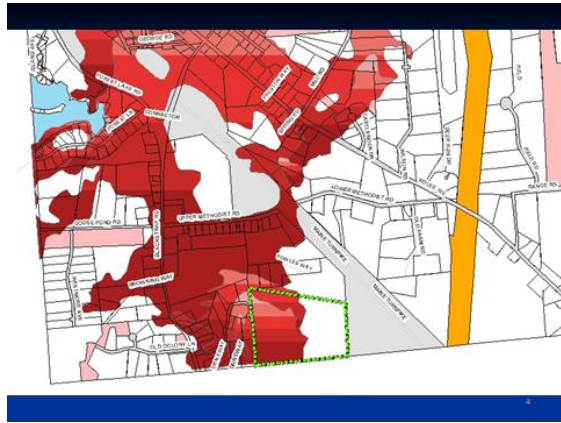
Randy Copp of West Cumberland presented the following slides and made the following points:

His neighbors have stated that 80% of Cumberland residents would be affected by having a gravel pit in their back yard.

Approximately 10% of the Town has sand and gravel deposits. Therefore, a gravel pit would not affect 80% of the residents. However, 80% of the residents will lose their property rights if this referendum passes.

Mr. Copp referred to the map below depicting the areas with sand and gravel deposits in red, 10% of the Town, and the blue and yellow areas (RR1 & RR2) making up 80% of the Town.





The red areas are the two remaining lots in West Cumberland in which gravel can be extracted. The smaller red lot is the Town’s gravel pit and the larger is Mr. Copp’s pit. Mr. Copp’s pit is approximately 47.5 acres, but with the setbacks, they are only allowed to work on 18.5 acres. There will be a minimum of a 200’ setback from all property lines. 3 residential homes about this property and buffers will be added.

The following photos are examples of reclaimed gravel pits where homes have been built:





This photo is an example of Mr. Copp's vision for his property when he is finished.

An excavated pond in West Cumberland.

These photos show how man and machinery can enhance the value of a piece of land without contaminating the aquifer and destroying the neighborhood.

Mr. Copp said that Section 410 is the strictest ordinance that we have in the entire zoning ordinance. The buffering requirements are more than double of any other use. Section 410.3.1 states that the excavated land will be left in a state more useful for some future purpose conforming to the district requirements in which the excavated site is located. Excavation of land was a permitted use as a special exception from 1959 to 2010 and a permitted use prior to 1959. On June 28, 2010, the Cumberland Town Council changed excavation of land from a special exception to a permitted use. After multiple Public Hearings by the Council and the Planning Board, and postings in the newspaper, there was no opposition. Mr. Copp said that his piece of land will be re-

vegetated after he has completed reshaping it. His project will not contaminate the ground water; it is not located on the aquifer per the Maine Geological Map, the Maine Dept. of Environmental Protection, and a presentation by Sevee & Mahar Engineers. This project will have very strict DEP and Town guidelines to adhere to. Mr. Copp has met with the neighbors and feels that they are not interested in a compromise or allowing him to do work on his land. He is simply asking to do something that is, and always has been allowed there. This project will increase the value of the land and make it more useable.

Mr. Copp finished by saying that if you support any of the following, you must vote No on June 14th. If you support the Town Council, the Zoning Ordinance, the Comprehensive Plan, local business, local farms, making Cumberland more sustainable, and protecting your property rights, then get out and vote. Mr. Copp thanked the Town Council and Town Manager for the opportunity to speak on this matter. He also thanked the residents for listening, getting involved, and voting.

Joyce Baughan of Blackstrap Road said that many years ago, reclamation of gravel pits did not exist. Old pits were abandoned and some remain that way today. In the 80's, reclamation took the form of grassing and sloping the properties and turning it into a piece of property that a home could be built on. Unfortunately, reclamation today means the continuous use of a gravel pit in a different form. The fact that Mr. Copp wants to make a beautiful piece of property out of his pit 20 years from now may be true, but we don't know what reclamation is going to look like in the next 20 years because it has changed drastically in the last 20 years. The problem is not the reclamation, its industrial activity taking place in a residential neighborhood.

Teri Maloney-Kelly thanked the Town Council for giving the citizens the opportunity to bring a referendum before the Town and the citizens that supported the petition. 650 signatures were collected in 10 days. This leads her to believe that the citizens of Cumberland truly do want to protect the rural character of their neighborhoods. Mrs. Maloney-Kelly urged everyone to educate themselves about the upcoming referendum and visit www.cleancumberland.org

Town Manager Shane said that on June 6th another Public Hearing will be held on this item to give each side a final opportunity to speak and give the public another chance to hear it before the election.

11 – 066 To set a date of June 14, 2011 for a referendum re: changes to the Municipal Ordinances re: excavation of lands in the RR1 and RR2 zones.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to set a date of June 14, 2011 for a referendum re: changes to the Municipal Ordinances re: elimination of excavation of land as a permitted use or special exception in the RR 1 and RR2 Districts.

VOTE: 7-0 UNANIMOUS PASSAGE

11 – 067 To hear a report from the Finance Committee Chair re: 3rd quarter financials.

Councilor Perfetti, the Finance Committee Chair explained that this is standard 3rd quarter reporting and the revenue and expenses are both stable. Councilor Perfetti introduced Finance Director, Alex Kimball to report on the details.

Mr. Kimball reviewed the following for the Council:

3rd Quarter 2010-11 Budget Update

An expensive winter, but it could have been worse

Storm Related Expenses through 3/31

	Overtime	Diesel	Road Salt	Totals
2010-11 Budget	\$ 60,000	\$ 40,000	\$ 87,000	\$ 187,000
2010-11 YTD	\$ 56,452	\$ 37,767	\$ 96,313	\$ 190,532
2009-10 YTD	\$ 41,124	\$ 28,708	\$ 80,864	\$ 150,696
2008-09 YTD	\$ 53,749	\$ 27,659	\$ 127,405	\$ 208,813
2007-08 YTD	\$ 70,751	\$ 35,000	\$ 113,878	\$ 219,629

2011-12 Budget \$ 60,000 \$ 40,000 \$ 95,000 \$ 195,000

TOWN OF CUMBERLAND YTD Expense Report Through March 31, 2011

Department	2010-11			2009-10 Used
	Budget	YTD Expenses	Used	
General Administration	\$ 1,078,436	\$ 845,471	78.4%	82.6%
Public Safety	\$ 1,792,273	\$ 1,402,187	78.2%	78.9%
Public Works	\$ 1,626,002	\$ 1,238,251	76.2%	76.8%
Parks & Recreation	\$ 624,231	\$ 496,288	79.5%	84.5%
Library	\$ 353,580	\$ 270,334	76.5%	76.8%
Other Expenses	\$ 303,049	\$ 268,482	88.6%	80.1%
Controllable Expense Total	\$ 5,777,571	\$ 4,521,013	78.3%	79.6%
Other Expenses	Budget	YTD Expenses	Used	Used
MSAD #51	\$ 11,830,338	\$ 8,859,853	74.9%	74.9%
Debt Service	\$ 996,578	\$ 818,264	81.9%	71.9%
County Tax	\$ 600,901	\$ 600,901	100.0%	100.0%
Cemetery Association	\$ 22,000	\$ 24,278	110.4%	100.0%
Capital Imp. Plan	\$ 333,485	\$ 333,485	100.0%	100.0%
Insurance	\$ 254,252	\$ 258,208	101.6%	102.6%
Other Expense Total	\$ 14,039,554	\$ 10,894,989	77.6%	77.5%
All Expenses Total	\$ 19,817,125	\$ 15,416,002	77.8%	78.1%

Revenues are up slightly

Revenues Through 03/31/11

Description	Budget	2010-2011 Actual	Percent Collected	2009-10 %
Misc Revenues	\$ 2,418,786	\$ 1,773,116	73.3%	71.9%
Dept Revenues	\$ 1,126,747	\$ 613,069	54.4%	50.5%
Total Revenues	\$3,545,533	\$ 2,386,185	67.3%	65.6%

Selected Revenue Lines	Budget	Actual	10-11	09-10
Excise Tax	\$ 1,330,446	\$ 982,993	74%	76%
Building Permits	\$ 35,000	\$ 24,014	69%	85%
State Revenue Sharing	\$ 500,000	\$ 415,359	83%	68%
Spring Recreation	\$ 25,000	\$ 15,190	61%	46%
Bags/Universal Waste	\$ 325,000	\$ 163,672	50%	44%

The overall budget is projected to fall short by .5%

Estimated 2010-11 General Fund Budget vs. Actual

	Budget	Actual	\$ Variance	% Variance
Revenues	\$ 20,387,373	\$ 20,388,319	\$ 946	0.0%
Expenses	\$ 19,817,125	\$ 19,925,980	\$ 108,855	0.5%
Net Effect			\$ (107,909)	-0.5%

Property Tax collections have improved drastically

Property Tax Collections through 3/31/2011

	2007-08	2008-09	2009-10	2010-11
Tax Commitment	\$ 15,762,627	\$ 15,901,519	\$ 16,612,279	\$ 17,647,491
Taxes Collected	\$ 15,104,784	\$ 15,162,052	\$ 15,861,837	\$ 16,977,620
Percent Collected	95.83%	95.35%	95.48%	96.20%
% Difference		-0.48%	-0.34%	0.38%
\$\$ Difference		\$ (75,828)	\$ (57,140)	\$ 66,635

11 – 068 To hear a report from the Police Chief re: department updates.

Chief Charron reviewed the following for the Council:

CUMBERLAND POLICE DEPARTMENT

APRIL 25, 2011
TOWN COUNCIL
POLICE ACTIVITY BRIEFING

UNDERAGE ALCOHOL VIOLATIONS

JUVENILES 16-17 MINORS 18-20

Juvenile:	Males	Females
	4	7
Minors:	9	2

There were a total of 3 drug violations all
Males 18 or older.
There were 2 OUI violations involving 1 Female 18 yoa
and 1 male 19 yoa.

CONSEQUENCES

■ FURNISHING ALCOHOL TO MINORS 1
FIRST OFFENSE \$500 FINE 2 DAYS CCJ
SECOND OFFENSE \$1000 3 DAYS CCJ

■ FURNISHING A PLACE 1
FIRST OFFENSE \$1000 3+ DAYS CCJ
SECOND OFFENSE \$2000 7+ DAYS CCJ

CIVIL SUIT CURRENTLY UNDERWAY

TRAFFIC ACTIVITY

WARNINGS & DEFECTS	1043
SUMMONSES	184
ACCIDENTS	87
PARKING TICKETS	77
TOTAL	1391

TYPES OF CRIME

- BURG/THEFT FROM MOTOR VEHICLES
- BURG/THEFT RESIDENTIAL
- THEFTS FROM M.V. catalytic conv.
- CRIMES INVOLVING FRAUD/ID THEFT
- CRIMINAL MISCHIEF

OTHER ACTIVITIES

■ ASSIST OTHER AGENCIES	249
■ ALARM RESPONSES	166
■ ASSIST CITIZENS	124
■ SHELLFISH CHECKS	59
■ WATER SAMPLES COLLECTED	120
■ ALARM PERMITS	389
■ CONCEALED WEAPON PERMITS	194

UCR DATA 2009

	Crime Per 1000	Clearance Rate
■ Cumberland	5.24	60.0
■ County	28.85	28.8
■ State	25.34	30.8
■ New England	27.56	N/A
■ U.S.	36.88	N/A

TRAFFIC DETAILS

■ TOTAL DETAILS	250
■ NUMBER OF WARNINGS	129
■ NUMBER OF SUMMONSES	25
■ RADAR DISPLAY DEPLOYMENTS	Just now being deployed

SRO ACTIVITY

■ CALLS FOR SERVICE	230
■ BULLYING INCIDENTS	(FACEBOOK etc.)
■ TRUANCY ISSUES	
■ SPECIAL NEEDS	
■ PARTICIPATION IN THREAT ASSESSMENTS	
■ DEALING WITH FAMILY CRISIS ISSUES	

LUNCH-N-LEARN

YOU'RE INVITED
THURSDAY APRIL 28, 2011 11AM-1PM
TOWN COUNCIL CHAMBERS
NTBI PRESCRIPTION TURN-IN
SPONSORED BY DEA
GUEST SPEAKER
RESIDENT AGENT MIKE WARDROP

11 – 069 To hold a Public Hearing to consider and act on a Mass Gathering Permit and Victualer's Licenses for Nassau Broadcasting for Maine's Ultimate Spring Yard Sale to be held at the Cumberland Fairgrounds on June 11, 2011 from 8:00 a.m. – 2:00 p.m. (rain date June 18th).

Town Manager Shane said that staff is recommending approval and there are representatives from the Farmer's Club present this evening if there are any questions on this item or the next three agenda items.

Public discussion: None

Motion by Councilor Porter, seconded by Councilor Stiles, to approve the Mass Gathering Permit and Victualer's Licenses for Nassau Broadcasting for Maine's Ultimate Spring Yard Sale to be held at the Cumberland Fairgrounds on June 11, 2011 from 8:00 a.m. – 2:00 p.m. (rain date June 18th).

VOTE: 7-0 UNANIMOUS PASSAGE

11 – 070 To hold a Public Hearing to consider and act on a Mass Gathering Permit and Victualer's Licenses for the Cumberland Farmers Club Auto Show to be held at the Cumberland Fairgrounds on June 12, 2011 from 8:00 a.m. – 2:00 p.m.

Town Manager Shane said that staff is recommending approval.

Public discussion: None

Motion by Councilor Stiles, seconded by Councilor Copp, to approve the Mass Gathering Permit and Victualer's Licenses for the Cumberland Farmers Club Auto Show to be held at the Cumberland Fairgrounds on June 12, 2011 from 8:00 a.m. – 2:00 p.m.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 071 To hold a Public Hearing to consider and act on a Mass Gathering Permit and Victualer's Licenses for the Penobscot Valley Dog Show to be held at the Cumberland Fairgrounds on June 23 – 26, 2011 from 8:00 a.m. – 4:00 p.m.

Town Manager Shane said that staff is recommending approval.

Public discussion: None

Motion by Councilor Moriarty, seconded by Councilor Turner, to approve the Mass Gathering Permit and Victualer's Licenses for the Penobscot Valley Dog Show to be held at the Cumberland Fairgrounds on June 23 – 26, 2011 from 8:00 a.m. – 4:00 p.m.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 072 To set a Public Hearing date (May 9th) to consider and act on Victualer's License Applications for Fat Guys Concessions for a miniature horse show at the Cumberland Fairgrounds on June 25 & 26, 2011.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date of May 9th to consider and act on Victualer's License Applications for Fat Guys Concessions for a miniature horse show at the Cumberland Fairgrounds on June 25 & 26, 2011.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 073 To set a Public Hearing date (May 9th) to consider and act on a Mass Gathering Permit for the Cumberland Memorial Day Parade to be held on May 30, 2011.

Town Manager Shane explained that the Town is not exempt from the ordinance and this is no different from any other mass gathering. The Ordinance Committee will look into exempting Municipal events in the future.

Motion by Councilor Copp, seconded by Councilor Turner, to set a Public Hearing date of May 9th to consider and act on a Mass Gathering Permit for the Cumberland Memorial Day Parade to be held on May 30, 2011.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 074 To hear a report re: amendments to Section 430 (Water Extraction & Storage) of the Cumberland Zoning Ordinance as recommended by the Planning Board and to set a Public Hearing date of May 23rd.

Councilor Moriarty explained that this item was discussed at the same time as the gravel extraction item. The Ordinance Committee recommended that the bulk storage and extraction of water be abolished in the five residential zones that it is currently permitted. The Planning Board recommendation is that no ground or spring water be pumped or extracted from the zones. That recommendation is a great deal further than the Ordinance Committee had proposed. The intention is to prevent a homeowner from extracting water, i.e. a residential well. He feels that the Planning Board understood what the Council had intended and feels that their motion is approval of the Council's recommendation. The moratorium applies to both the extraction of gravel and bulk storage and extraction of water. To avoid having to extend the moratorium, these changes will be considered by the Council on May 23rd.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date of May 23rd to consider and act on amendments to Section 430 (Water Extraction & Storage) of the Cumberland Zoning Ordinance, as recommended by the Planning Board.

VOTE: 7-0

UNANIMOUS PASSAGE

11 – 075 To authorize the Town Manager to accept delinquent taxes and issue a quitclaim deed for property identified as Tax Map R07/Lot 21, in the amount of \$8,327.02.

Town Manager Shane explained that the property owner has paid all past due property taxes and fees. Because the taxes were more than one year past due, the Council has to authorize the Town Manager as Tax Collector to accept them.

Motion by Councilor Perfetti, seconded by Councilor Copp, to authorize the Town Manager to accept delinquent taxes and issue a quitclaim deed for property identified as Tax Map R07/Lot 21, in the amount of \$8,327.02.

VOTE: 7-0

UNANIMOUS PASSAGE

V. NEW BUSINESS

Councilor Turner – Referenced the Legislative Bulletin from Maine Municipal Association and an article about repealing LD43. There is a provision that exempts modular homes. As we all know now, modular homes are no different from stick built homes. Exempting them would be a real boom to the modular industry if the present code sticks.

Councilor Copp – None

Councilor Porter – The Council received an e-mail from a young man regarding impact fees. The Council should look at whether they want to continue impact fees. The conditions in which impact fees were set is very different conditions than today.

Councilor Porter congratulated the Veterans Monument Committee for their continued aggressive fundraising efforts. If the funds are not raised by citizen donations, he feels that public funds should be used to complete this important community project.

He is disappointed with the elected officials and the government of North Yarmouth. He finds them to be irresponsible, not only to their own residents, but to the information that has been provided by the Council and the Town Manager. It is interesting that North Yarmouth residents feel comfortable enough to call our Manager to get the accurate information that they cannot get from their own elected or appointed leaders. He finds this incredibly offensive. He hopes that the outcome of the workshop this evening is a decision by this Council to finally say, if North Yarmouth is willing to participate, we are happy to have you, but if not then they can go elsewhere to find their services. It is time for the Town of Cumberland to stop subsidizing other people.

Councilor Perfetti – None

Chairman Storey-King – Reminder that the Japan Club at the Middle School is sponsoring a Japan relief benefit concert this Sunday at Greely Middle School.

Because of the June 14 election, the Town Council meetings have been moved to June 6th and 20th.

Councilor Stiles – Requested that the Town Manager assign the Ordinance Committee the task of exempting the Town from the Mass Gathering Permit requirement.

Councilor Stiles asked the Manager to update the Council on the clear cutting of a lot on Route 88.

Town Manager Shane said that last week, he received several calls from concerned residents of Ledge Road regarding a lot that was cleared from property line to property line with no apparent reason. The lot is not under contract for a home to be built, but there is a sign there by the property owner for a build package. When the subdivision was approved many years ago, there were no restrictions as to the number of trees that had to remain on the lot. The Code Enforcement Officer has contacted the lot owner and they are working to stabilize the erosion and sediment issues. The property owner is within their rights to do what they did.

Councilor Moriarty – None

Town Manager Shane – On May 9th, the countersigning of the MSAD 51 warrant will be taking place.

VI. ADJOURNMENT

Motion by Councilor Perfetti, seconded by Councilor Turner, to adjourn to Workshop re: Future contracts for Library & Recreation services with North Yarmouth.

VOTE: 7-0

UNANIMOUS PASSAGE

TIME: 8:52 p.m.

Respectfully submitted by,

Brenda L. Moore
Council Secretary