

**MINUTES**  
Cumberland Town Council Meeting  
Town Council Chambers  
**MONDAY, APRIL 11, 2011**

**6:00 P.M. Workshop** with Town Center Advisory Committee Liaisons to review committee recommendation.

**7:00 p.m. Call to Order**

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

**I. APPROVAL OF MINUTES**

March 28, 2011

Motion by Councilor Porter, seconded by Councilor Copp, to accept the minutes as presented.

VOTE: 7-0                      UNANIMOUS PASSAGE

**II. MANAGER'S REPORT**

- April 25<sup>th</sup> Police Department semi-annual report  
Police Chief Charron will be at the April 25<sup>th</sup> meeting to give a report of Police Department activity and what the hot topics are around town.
- May 9<sup>th</sup> Assessor's annual report  
Tax Assessor, Bill Healey will be at the May 9<sup>th</sup> meeting to discuss values town wide and an update since the revaluation.
- Item # 11-054 has been updated and separated into two separate items this evening. The proper procedure is to accept the validated petition from the Town Clerk, and then set the Public Hearing for the next meeting to set the referendum election date.

**III. PUBLIC DISCUSSION**

Kathy Lynch of Blackstrap Road, asked why there was a large dirt pile on Route 100 across from the Cumberland House of Pizza.

Councilor Copp responded that the dirt belongs to him. His son is building a house on Mill Road and Mill Road is currently posted. As soon as the road posting is removed, the dirt will be relocated to the house site.

Mrs. Lynch asked who had a blasting permit in the Pike Pit last Sunday morning at 9:30 a.m.

Town Manager Shane said that he was not aware of any blasting, but would find out who it was and get back to Mrs. Lynch.

Sally Bancroft of October Farm Lane wants to let everyone know that there will be a Good Friday Walk for Habitat for Humanity. The walk is on April 22<sup>nd</sup> and helps to raise money for Habitat for Humanity. There are currently 2 Habitat homes in Cumberland.

Mrs. Bancroft requested that a Town committee be formed to look for different ways to provide affordable housing in Cumberland.

Councilor Perfetti volunteered to help the Manager in whatever way he can to assist in forming such a committee.

Teri Maloney-Kelly asked the Town Manager if streaming the Council Meetings versus rebroadcasting them through Time Warner is a possibility.

Town Manager Shane responded that our contract with Time Warner will expire in November and we will look into streaming the meetings online within the next 6 months.

#### **IV. LEGISLATION AND POLICY**

##### **11 – 053 To hold a Public Hearing to consider and act on amendments to Main Street zoning as recommended by the Town Center Advisory Committee.**

Town Manager Shane explained that the zoning recommendation before the Council this evening have been in the works for approximately two years. The Planning Board returned the recommendation of the Town Center Advisory Committee to the Council with a 3/3 vote (no Planning Board recommendation).

Chairman Storey-King reviewed the history of the Town Center Advisory Committee and highlighted the issues that the Council amended in Workshop:

- Square footage - §204.23.2 (6, 7 & 8). The discussion was if storage space would be counted in the total of 2,500 sf. The language was amended to read "square footage shall not include internal storage areas".
- Bullet 14 (uses in buildings accessory to those above) was amended to read, "not allow accessory storage, ether buildings or units" (pods, etc.).
- Home Based Retail will be subject to site plan review
- §204.23.4.3 stated "there shall be no less than 80' of lot frontage". The Curry's lot was accepted, Map U13/Lot 109 which is 60' (Mrs. Curry currently has a music lesson business at that location).
- §204.23.6 Building Design, was amended to read "...new structures excluding single family homes. Consistent with §2.1 of the design standards".
- Hours for delivery – the 7:00 a.m. to 7:00 p.m. rule for construction was adopted.

Chairman Storey-King opened the Public Hearing for public discussion:

Michael Levert of Range Road and member of the Town Center Committee thanked the Council for all their work. Since the residents of Cumberland have to shop or get their morning coffee in Falmouth or Yarmouth, there is no opportunity in Cumberland to run into other residents, ask how they are, and see their neighbors. The proposal in front of the Council this evening is a chance to give Cumberland residents a town center, a place where you can run into your neighbor. This proposal is about strengthening our community and bonding people to where they live. A town center is what really connects people to their community. This proposal has gone to extraordinary lengths to prevent chain stores and restaurants. Sustainability means change. Keeping Cumberland a wonderful place to live and raise a family means change. We have had significant changes in Cumberland over the years. Now is the time to change again. If we fail to support this thoughtful proposal and continue to exclude folks from Main Street (except those who were lucky enough to buy 30-40 years ago),

he thinks that nobody in this room will be happy where Cumberland ends up. Mr. Levert urged the Council to support the proposal.

Bill Ward of Longwoods Road and former member of the Planning Board said that there were several workshops and two Public Hearings debating this proposal. He voted against the proposal at the Planning Board because 1) during the Planning Board Public Hearings, he did not hear enough convincing testimony that residents wanted a rezoning on Main Street, and 2) he personally was in favor of some changes, but wanted some preservation language in the rezoning. He was not able to get the support of the preservation language, so he voted against it.

Caroline Curry of 321 Main Street thanked the Council for their willingness to work with the residents. She feels like this proposed change has happened quickly and there appears to be no overwhelming support among the residents of Main Street. There should not be a rush to change zoning that will affect so many people unless it is a change that the Council is certain about.

Andrew Bacca of 325 Main Street feels that a lot of this issue has been focused on the Comprehensive Plan. When the Town wants these things (i.e. coffee shops, etc.) they have to think about the impact to the neighborhoods they are putting them in. There have been many negative impacts on Main Street over the past few years. He will likely put his house on the market this summer. He is disappointed because he feels that the Town has not looked out for the minority on this issue.

Bob Coulliard, Planning Board member, voted against this issue because he felt that it should have gone from the cemetery all the way to the Falmouth town line. He also was against combining two lots, which means more parking area. He has always been for more businesses in the town center, but feels that this plan is not restrictive enough.

Chris Neagle, Planning Board member, supports the proposal as a resident of West Cumberland for all the reasons that Mr. Levert spoke to. He feels that it's sad that he has to drive to Gray to find a place to eat. The Comprehensive Plan speaks overwhelmingly that a lot of people want this in town. To those people who say it's unfair for those who bought into the Town because it's residential and now your changing it, he would say what about those people who own one of the current commercial lots in the 90's that was a legal commercial lot, and all of a sudden became non-conforming. That was not very fair to them. Zoning always has winners and losers and he feels that the Town made a choice in the 90's to keep Main Street residential. Now the majority of residents would like change that decision. Mr. Neagle said that he has a lot of respect for the work that the committee did and out of respect for the work that they did, we should support it.

Dan Nuzzi, 271 Main Street, does not support the zoning change because a wholesale zone change is not a good idea and is not fair to the residents who live in that area. He feels that a wholesale zone will change the character of the town center. Why not leave it as is, and if someone has a proposal for a coffee shop, for example, let's have a contract zone for a coffee shop. A contract zone is a healthy practice and with the right amount of input, can allow one or two parcels to change in a way that is desirable and may have a benefit for everybody.

Mike Tardiff, 331 Main Street, asked if there really is language that says that construction cannot begin before 7:00 a.m. He has been told that that rule does not really exist.

Town Manager Shane responded that there is not a Town ordinance, but in almost every site plan and every contract, it states 7:00 a.m. – 7:00 p.m., unless otherwise approved by the Town Council.

Chairman Storey-King said that those hours are considered industry standard.

Tom Powers, 306 Main Street, expressed his admiration to the committee and all their hard work and effort. Many Cumberland residents appreciate its rural character and hope that will not ever change. It is his belief that this proposal is being driven by an emotional reaction in response to a concern about contract zoning. How would you feel if there parking lots on either side of your house? What about signage and increased traffic? Right now Main Street is just fine, there is nothing wrong with it. Why do you wish to destroy it and change the character of the Town? Mr. Powers said that he does not think that anybody has ever been asked “are you willing to sacrifice something to get that coffee shop, and if so, which one of these homes should we eliminate so you can get a cup of coffee...” The Council has no idea or control over what type of commercial business that will come to Main Street. It’s a gamble and he feels it is not worth the return.

Linda Putnam, 341 Main Street said that she is on the fence about this issue. She does not want to see a totally commercial Main Street, but is not worried about it because business would have to be viable and Cumberland does not have the population density to support a lot of businesses. The residents of Main Street represent a small population and Main Street belongs to the entire Town and feels that the Council has to look at the broad view. That said, she asked what the affect the development of the Doane Property will be on Main Street and what services people will want and what stresses will be placed on the area. She wonders if we are better prepared with our current zoning or better with this new proposal.

Dick Grass, 302 Main Street, has lived on Main Street his entire life and does not want to see any of this happen. He feels that this is the wrong direction for the Town. People move to Cumberland because of what it is, not for what it could be. If this goes through, his property value will drop. He feels that this would be the beginning of the derogation of Main Street.

Councilor Copp thanked everyone from Main Street who are here this evening and asked who here this evening have homes depicted in green on the map. (6)

Councilor Porter said that throughout the Comprehensive Plan, there is a sustainable community and within that sustainable community are a number of things, business is one piece of that. He does not support a contract zone because it is reactive and it does not let people know that there is an opportunity to locate a business on Main Street in Cumberland. We have had 18 months to look at this. 32% of our citizens have responded to a survey specific to business in this location. 32% of our citizens want to see specific types on business on Main Street. We need sustainable business in our community that will serve our citizens. It will be supported, and it has been supported overwhelmingly by our community. The factual information is very clear. The citizens of Cumberland have spoken.

Councilor Perfetti wants to clear up the notion that he is anti-contract zone. Nothing is further from the truth. He is generally not opposed to contract zones, but he is opposed to saying that one thing is being done, and then doing something else. He began to notice that Main Street was changing one property at a time. He feels that there are strengths and with the plan, but attempting to decide what to do in this area has been the most thorough, comprehensive, and inclusive process that he has seen happen. The uncertainty is there now and will remain if we decide to change the zone. This potentially introduces new business uses into the zone. However, it also introduces denser living into the zone. As our population ages, there will be a need for this type of centralized location. A series of choices have led us to this. The Comprehensive Plan was one major part, but there were others and rezoning one property at a time is not the way to do it.

Councilor Turner said that he believes in contract zoning because it makes sense and as a tool, legally it is in our process for a good reason. We have had a lot of good people from all over town who have put together a plan that makes sense. If the Council chooses contract zone this evening, or an alternative that might include the design standards that have been formulated and applied to the non-conforming lots, or a rezone. The fact

that the Council is still tweaking the plan, after 9 months of very hard work by the committee, says something. The Planning Board took more grief than deserved for not coming to a conclusion on this because this is a very difficult package to put together. He is coming to the conclusion that a modified version is probably wise. Something needs to happen on Main Street and it doesn't have to be detrimental to the ambiance of the town.

Councilor Stiles said that he admires the work that the committee has done and admires the input from the residents. He can see businesses such as an adult daycare on Main Street, but does not see that having a chance under a contract zone. He has spoken with many residents about this issue. The Council has done everything possible to control the outcome with size and design standards. Much consideration has been given to this plan and he feels that the Council still has some control, albeit not as much control as with a contract zone.

Councilor Moriarty said that he, Councilors Perfetti, and Porter worked for 9 months with the Town Center Advisory Committee and they can all attest to the hard work of the committee. There was a period of 6 months from when the committee stopped its work and the Planning Board voted 3 to 3 in a motion to endorse the committee's recommendation (the outcome of that vote was not to endorse). For him, that 6 month interval was helpful because he was able to step away from the committee process and be involved in the Planning Board process, looking at it from a different perspective. He began to think that there may be a different alternative that might work while honoring and respecting the hard work of the committee. The proposal is an entirely new zone in the town center permitting new uses, which include personal services, business and professional offices, retail stores, a small market and a café. The second recommendation that the committee proposed is to set design standards which would be mandatory to all new, residential construction within the zone, in terms of appearance, buffering, lighting, landscaping, etc. The first goal of the design standards reads "to provide a well-defined town center with a mix of compatible uses that will contribute to the vitality, livability and sustainability of the entire town". When looking at the current map of Main Street, there is currently a viable, sustainable mix. There are 10 of 31 lots that are non-confirming. That mix works well and he would not want to see this area of town change to all residential or all commercial, but rather a compromise that would allow the new uses as defined by the committee to take place on those lots that are already non-conforming to that there can be a turnover or change of use but without further intrusion to the residential areas. This will preserve the mix and the fundamental residential character of the heart of Town.

Chairman Storey-King feels that this work has come out of a vision of what our community should look like. The Comprehensive Plan Committee met monthly for 3 years with over 20 citizens on that committee. Part of the desired vision for our community is that it be thoughtful and not reactionary. The intent of the Council is to keep this a great community, although we may disagree how that happens. We are not looking for commerce, we are looking for business. Overwhelming, the Comprehensive Plan supports a sustainable, viable, walkable community. Many thought this issue may die, but she believes that in fairness the process has to be completed.

Motion by Councilor Porter, seconded by Councilor Perfetti, to move the Town Center Advisory Committee recommendation, as revised this evening, to amend the Town of Cumberland Zoning Ordinance to add Section 204.23, Town Center District, as a new zone.

VOTE: 4-3 (Moriarty, Copp & Turner opposed) MOTION PASSES

**11 – 054 To hold a Public Hearing to accept validated petitions from the Town Clerk for changes to the Municipal Ordinances re: excavation of lands in the RR 1 and RR 2 Zones, and to set a date of June 14, 2011 for a referendum re: changes to the Municipal Ordinances re: excavation of lands in the RR 1 and RR 2 Zones.**

Town Manager Shane explained that the Public Hearing for this item will be held on April 25<sup>th</sup> in order to be in compliance with Article X, Section 2 of the Town Charter.

Town Clerk, Tammy O'Donnell explained that a sufficient number of signatures was obtained and validated. The Cumberland Environmental Action Network did a great job and put a lot of effort into this.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to receive the Town Clerk's Certificate of Sufficiency of Petition.

VOTE: 7-0

UNANIMOUS PASSAGE

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date of April 25, 2011 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 permitted use in the RR 1 and RR 2 Zones.

VOTE: 7-0

UNANIMOUS PASSAGE

Councilor Moriarty requested that on the April 25<sup>th</sup> agenda directly following the Public Hearing, be an item to call the election for the referendum to be held on June 14, 2011.

**11 – 055 To hold a Public Hearing to consider and act on a Contract Zone Agreement for Phase One of the Doane Property Revitalization Project with Bateman Partners, LLC as recommended by the Planning Board.**

Town Manager Shane said that David Bateman is present this evening to answer any questions that the Council may have. At the last meeting, the Council asked for several items which have been added to the Contract Zone Agreement (connection of Wyman Way to Drowne Road, that Letters of Credit for impact fees be separate from the Letter of Credit for the infrastructure improvements, and the current energy efficiency codes that are in place with the state today be followed).

Councilor Porter asked for verification that Mr. Bateman agrees to use the energy efficiency codes that are in place with the state today regardless if those standards be revoked.

Mr. Bateman said that he agrees to the recommendations regarding the contract amendments and the energy efficiency amendment.

Bill Ward said that he is in favor of the Contract Zone for phase one of this project. On page 12 of the document, F(1) is difficult to understand and brought that up at the Planning Board meeting. In the Planning Board meeting minutes, Chairman Neagle suggested changing it to read “not to be centered to minimize the impact of the existing residences”.

Motion by Councilor Copp, seconded by Councilor Turner, to approve the Contract Zone Agreement for Phase I of the Doane Property Revitalization Project with Bateman Partners, LLC as recommended by the Planning Board, with an amendment to Exhibit C, F(1) to read, to minimize the impact to existing residences.

VOTE: 7-0

UNANIMOUS PASSAGE

Motion by Councilor Stiles, seconded by Councilor Perfetti, to amend the above motion by adding an amendment to Exhibit C, F(1) to read, “to minimize the impact to existing residences” at the end of that section.

VOTE: 7-0

UNANIMOUS PASSAGE

Chairman Storey-King moved the next two items out of order:

**11 – 059 To hold a Public Hearing to consider and act on amendments to the Twin Brook Recreation Area Policy re: adoption of MPA lightning policy.**

John Eldredge, vice-chair of the Twin Brook Committee said that there has never been a specific policy that addressed thunder and lightning. The Twin Brook Committee is recommending adoption of the Maine Principals Association's (MPA) policy of no activity for 30 minutes after the last lightning is seen or thunder is heard.

Chairman Storey-King voiced her concern about the middle school students who are bussed to Twin Brook and dropped off. Where would they go during a thunder & lightning event? This is not a Town issue, but it would be the Town policy. Would we require them to leave a bus for those kids?

Councilor Porter said that there are two separate issues. The Town is telling people that they are not able to continue their activity at Twin Brook during thunder and lightning. We are not providing a sheltering policy as part of this.

Councilor Moriarty pointed out that the M.S.A.D. is already bound by the MPA policy.

Councilor Moriarty suggested amending page 7-7 (s) to read "It is mandatory that organized groups who uses the Twin Brook Facility suspend activity..." instead of "It is mandatory that anyone who uses the Twin Brook facility suspend activity..."

Mr. Eldredge agreed with the suggested amendment.

Motion by Councilor Moriarty, seconded by Councilor Copp, to refer back to the Twin Brook Advisory Committee, the Twin Brook Recreation Area Policies and Rules to amend §11(s) Lightning Policy as discussed this evening.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 – 060 To hold a Public Hearing to consider and act on amendments to the Twin Brook Recreation Area Policy re: prohibiting horses at Twin Brook.**

Vice-Chair of the Twin Brook Committee, John Eldredge explained that over the past 15 years there has been quite an evolution on the property as well as activities. There are a number of activities that take place at Twin Brook every day, all year long. One of these activities that has been grandfathered into the original site plan is horseback riding along the periphery for Cumberland residents. Over the years, horseback activity has increased and horses are being trailered in. There have been a number of instances of horses riding on the trail which becomes a concern because it is not compatible with walkers, runners, skiers, not to mention the impact it has on the trail surface. Given this, the committee feels that this use is no longer compatible.

Councilor Perfetti asked Mr. Eldredge how this issue came about. Were there complaints and was there an attempt to reach out to the riders to try to reach a compromise or solution? He was advised by a resident that in another town, riders must register and are required to wear a jersey so that they can be identified and reported if they are breaking the rules. He is hopeful that a compromise can be reached.

Mr. Eldredge said that this issue came up after several months of deliberation by the committee. There have been a number of observances by residents and park staff of horses on the trails.

Norma Jean Forbes, Tuttle Road, owns a private horse facility on 11 acres. She was very surprised to learn that someone was attempting to ban riding in Twin Brook. They do not ride on the hiking/skiing trails. To her knowledge, there are no marked trails for horses. To take this use away from her, she would feel discriminated against.

Bob Coulliard of West Cumberland suggested that a trail be marked along the perimeter of the park specifically for horses. He would like this considered before completely shutting them off.

John Polito, 154 Tuttle Road, is concerned because he owns the horse farm across the street and no one notified him that this issue was being discussed this evening. He went to Twin Brook to walk the horse trails and could not find them. There were no signs. The original purpose of Twin Brook was to be open space to be utilized by all for recreational activities. The park has a limited use now and that was not the intent.

Diana Lee, 10 Harris Road said she uses the park and appreciates it and urged the Council not to take it away.

Iwona Tarling said that she is a frequent user of Twin Brook. She would like to see the Town post rules and regulations at Twin Brook. She hopes that the Town will build a bridal path for horses so the fields and other trails are not destroyed by horses.

Councilor Copp said that Twin Brook was purchased with tax payer money for tax payer use. Over the years, it appears to him that it is becoming a recreational facility for MSAD 51. Hunting has been banned, snowmobiling has been banned, and now horses? It's another thing being taken away and it's wrong. It is a public facility for public use.

Councilor Stiles said that it is a safety hazard having horses and runners using the same trail. It is critical to designate where the horses are allowed to go on the property.

Councilor Porter said that it is important going forward, to have a member of the horse community be part of the Twin Brook Committee. There was no malice here on the part of the committee, their interest was pure. He feels that had they had the additional information, we would not be here this evening.

Councilor Moriarty said that perhaps this item should be tabled this evening to get input from Town Staff regarding what they are seeing for damage, etc.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to table in order to obtain input from Town Staff and send back to the Twin Brook Committee for further consideration.

VOTE: 4-3 (Storey-King, Copp, and Perfetti opposed)      MOTION PASSES

**11 – 056 To forward to the Planning Board for a Public Hearing and a recommendation, amendments to the Coastal Waters and Shoreland Zoning Ordinances as recommended by the Coastal Waters Commission.**

Craig Kinney, vice-chair of the Coastal Waters Commission explained that a number of updates to the Shoreland Zoning Ordinance have taken place over the years. The most recent is related to lighting on new or existing wharfs.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to forward to the Planning Board for a Public Hearing and a recommendation, amendments to the Coastal Waters and Shoreland Zoning Ordinances as recommended by the Coastal Waters Commission.

VOTE: 7-0      UNANIMOUS PASSAGE

**11 – 057 To hear a report from the Coastal Waters Commission and to hold a Public Hearing to consider and act on a Wharfing Out Permit for Carole & Delvyn Case, 18 Ole Musket Road, Cumberland Foreside, Map U2, Lot 20.**



Mr. Kinney said that the Coastal Waters Commission held a meeting on February 23<sup>rd</sup> to review the application and held a site walk on March 26<sup>th</sup>. The Coastal Waters Commission is recommending approval of the permit application.

Motion by Councilor Porter, seconded by Councilor Turner, to approve the Wharfing Out Permit for Carole & Delvyn Case, 18 Ole Musket Road, Cumberland Foreside, Map U2, Lot 20, with the conditions stated in Supplement #1 of Permit Application, dated March 11, 2011.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 – 058 To hold a Public Hearing to consider and act amendments to Section 204.9, Village Center Commercial District (VCC), of the Cumberland Zoning Ordinance to add Aggregate Processing and Construction Operations with a 500' set back from Route 100, as recommended by the Planning Board.**

Town Manager Shane explained that this item came forward several months ago at the request of the landowner. Mr. Coleman's intent is to slope off the gravel pit and make it conform to the VCC uses, and see if the Council is amenable to allowing him to move his construction operations here, which are not presently allowed in the zone, and add aggregate processing. Mr. Coleman's construction operation is fairly small and he is looking to put this property back on the books and make it a useful piece of property.

Chairman Storey-King asked Mr. Coleman how often aggregate processing would take place on his property as opposed to on a job site.

Mr. Coleman explained that he brings fill back to his shop to screen to be used on job sites. He would like to be able to crush ledge into gravel, but this only makes sense economically if there is a lot of material to crush. This may only happen 1 week per year.

Jim Tarbox, 156 Gray Road, said that Mr. Coleman's operation would be directly behind his home. He was on the Route 100 Committee. If that committee thought this was a good idea, they would have included it in their recommendation. The committee's vision was for professional businesses in a village setting. This is not a good fit for that vision at all.

Bob Coulliard, West Cumberland, said he was also on the Route 100 Committee. When the committee looked at this pit for this use, it was voted against almost unanimously. It doesn't fit. It needs to be cleaned up, but rock crushing, along with the noise and the dust, will affect the neighbors.

Kathy Lynch was also on the Route 100 Committee and she finds it interesting that comments were made regarding the Town Center Advisory Committee working for 9 months. The Route 100 Committee worked for almost 2 years, meeting twice per month. This is not what the committee envisioned and it is not a compatible use. Route 100 was supposed to be the ideal business area with perhaps an accounting firms, a hairdresser, barber shop, things of that nature. Small business that can fit into that small area. Not gravel trucks coming and going. This is not what the committee asked for. People give their time to serving on committees. She gave two years and is appalled that this type of operation would be allowed.

Dan Caron, 130 Gray Road, said that since the recommendations were just accepted 3 ½ years ago, it does not seem like a good idea to make a zone change already. If it is to bring in tax revenue, he cannot imagine it will be much. To quote Councilor Perfetti from earlier this evening, it would be crazy to consider a contract zone in an area that was just rezoned. Mr. Caron agrees with that statement. Councilor Porter said it would be foolish to put a committee together and not follow through on their recommendation. He agrees with this also.

Rodney Coleman said that he has owned that land for over three years. When he purchased the pit, it was being used for the same use he is asking for. He thought it was a permitted use and he has never had a complaint. A lot of fears that people have will not be an issue. He may crush rock only 1 week per year. Any of these issues would have come up over the past three years. The only reason we are here this evening is because the Town Manager advised Mr. Coleman that he was violating the current zoning. He started the process to make it a permitted use so he can use the pit that he purchased several years ago.

Teri Maloney-Kelly, West Cumberland, said that she has struggled with this issue and feels badly for Mr. Coleman because his timing is bad. She is frustrated with what is going on in West Cumberland and this is one of those “not in my backyard” issues. She never realized how much having well maintained roads for safe passage how valuable that was for a residential area. When she was younger, there were 2 operating gravel pits in West Cumberland. When she moved back to West Cumberland in 2001, those pits were closed or hardly operating. Later, they were reclaimed and operated not as gravel pits, but as construction operation businesses. The reality is, if they are aggregate processing (and they are) it is doubling the amount of traffic on their road, because they bring material in, dump it, and leave. Then, the material is processed and they come back in, fill up their heavy dump truck, and leave again. This is doubling the heavy weight traffic in West Cumberland. She feels that opposing this request will make it appear that she is not supporting business in West Cumberland. Frankly, West Cumberland has not had any great new business to support. Since Mr. Coleman is already operating his business there, we might as well gather some tax revenue from him because he is already impacting their neighborhood. There is no enforcement in this Town other than neighbors complaining and that is bad policy. She cannot support the aggregate processing piece, and feels that the time has come for this Council to start taking some responsibility for the future and develop a plan to repair Route 100 and Blackstrap Road, especially since they continue to increase the heavy commercial traffic that exists in West Cumberland.

Tara Tarbox, 156 Gray Road, was excited when the Route 100 Committee was formed because she felt that the Town really did care about them. The vision of the committee was exciting. Aggregate processing does not support that vision. Businesses will come. Please don't do this.

Ron Copp, Sr., of West Cumberland said that nobody is going to come to clean up that pit. It has been 60 – 70 years and it's not cleaned up. We have a chance for somebody to come in and spend a lot of money reclaiming the property and it would be a shame to not allow him to do it. It will stay in that condition forever if this is not allowed. Mr. Coleman would be willing to work with the neighbors with buffering.

John Polito, Tuttle Road, said that he has a great amount of respect for the Planning Board and their process. As a taxpayer and businessman in this Town, he supports and encourages the growth of business in the community. He was curious, so he went to visit Mr. Coleman's facility in Portland. He was impressed by the operation because it is a small operation and Mr. Coleman is not in an aggregate processing company. He is an excavation contractor. We have an opportunity to raise the pit up and make it a useful piece of property and he hopes that the Council will vote to accept the Planning Boards recommendation.

Councilor Moriarty said that this is not a process to license Mr. Coleman, but rather to add a new uses to the zone, which would apply to him or anyone who succeeds him on this piece property. It is adding 2 new uses where they don't exist now and have not existed in the past.

Councilor Copp said that Mr. Coleman has owned this land for 3-4 years and the zoning has changed. Maybe he knew that the zoning had changed, maybe he didn't know. This is not about a gravel pit. This is about a guy who bought a piece of land that, to him, has been a worthless piece of land for 49 years. If nothing is done in this gravel pit, it is going to continue to be a worthless piece of land. Mr. Coleman wants to locate his business in this pit, build the pit up, slope the banks, and improve the looks of it. He has the interest and drive to make this a better piece of property. Commercial traffic will continue on Route 100 no matter what. Mr. Coleman has

4 dump trucks and they will come and go, but not to the extent that Blue Rock's trucks did. The inconveniences are 14 days per year of crushing. Mr. Coleman is willing to work with the neighbors.

Councilor Moriarty said that at the time that Mr. Coleman bought the land, it appears that neither aggregate processing nor construction operations were permitted. In the VCC zone, contractor space is a permitted use. It is defined as "a facility consisting of one or more individual units for contractors to utilize for storage, inventory, and prefab of materials associated with construction". In his view, the pit could be reclaimed for construction operations only and not do too much harm to the abutters. Mr. Coleman would have to think about if his business could relocate if construction operations were the only zoning change, and not aggregate processing.

Councilor Perfetti said that sounds like a compromise, but it also sounds like a nice way of saying no. Mr. Coleman is asking to do aggregate processing and that compromise does not include the key item that he is requesting. Can he operate his business as it is now minus the aggregate processing?

Chairman Storey-King responded that Mr. Coleman could do aggregate processing, but not rock crushing. Would that be possible?

Councilor Moriarty said that a new definition would have to be drafted and sent to the Planning Board.

Councilor Stiles said that Mr. Coleman may only crush rock 1-2 weeks per year, but once the zone is changed, it opens it up to others. The real problem with rock crushing is the noise and dust.

Councilor Porter said that he doesn't have a problem with limited use of the property. Councilor Moriarty's compromise gets Mr. Coleman almost where he needs to be, but he is not sure, from an ordinance standpoint, how it can be drafted to provide for a limited timeframe while allowing Mr. Coleman to operate his business properly.

Town Manager Shane said the first step would be to separate the construction operation. The second step might be to send the aggregate processing piece back to the Planning Board, separate the aggregate processing and screening operations, and come back with a compromise for screening and not crushing. The site plan could limit the hours of operation, days of the week, etc. This issue is not going to go away; it will come back in West Cumberland and on Route One as well.

Councilor Moriarty asked Mr. Coleman if the compromise of the allowed use described earlier of construction operation would help him relocate his business.

Mr. Coleman said that it would not help him. That piece of property is only ever going to be developed by someone like himself. He has the equipment and the jobs to support filling it. That is why he purchased it and he paid a lot of money for it. Rock crushing is the stumbling block here and it is the one thing that he does not do. He wanted the option to process asphalt to be put into finish materials, much like the Town does. This is normally a winter activity. If he could be limited to winter months, that would be a reasonable compromise. He has no intention of crushing rock there.

Councilor Porter said he wants to make this work and he feels that the ordinance has to be drafted in such a way that it identifies what he will be allowed to do. If he's looking for rock crushing, he's not going to get it. If we're able to draft language to allow him to screen loam and to do other things that are the core part of his business, the stumbling blocks partially disappear. If Mr. Coleman is willing to move on the rock crushing activity, that is the only way to get an affirmative vote.

Councilor Copp asked the Manager if there is a way to give Mr. Coleman permission to haul in fill until this issue is resolved.

Town Manager Shane said that because Mr. Coleman is proposing a non-residential use, he could come to the Planning Board with a grading plan and an erosion control plan, then be allowed to haul fill into the pit, with Planning Board authorization.

Motion by Councilor Copp, seconded by Councilor Turner, to amend Section 204.9, Village Center Commercial District (VCC), of the Cumberland Zoning Ordinance to add Construction Operations, and Aggregate Processing, less rock crushing, with a 500' set back from Route 100, as recommended by the Planning Board.

VOTE: 6-1 (Moriarty opposed)

MOTION PASSES

**11 – 061 To set a Public Hearing date (April 25<sup>th</sup>) to authorize the Town Manager to enter into a labor contract agreement with the Public Services/Val Halla Employees Association for the period of July 1, 2011 – June 30, 2014.**

Town Manager Shane recommended moving this item to May 9<sup>th</sup>.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date of May 9<sup>th</sup> to authorize the Town Manager to enter into a labor contract agreement with the Public Services/Val Halla Employees Association for the period of July 1, 2011 - June 30, 2014.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 – 062 To set a Public Hearing date (April 25<sup>th</sup>) 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.**

Motion by Councilor Stiles, seconded by Councilor Perfetti, to set a Public Hearing date of April 25<sup>th</sup> 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.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 – 063 To set a Public Hearing date (April 25<sup>th</sup>) 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.**

Motion by Councilor Stiles, seconded by Councilor Turner, to set a Public Hearing date of April 25<sup>th</sup> 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.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 – 064 To set a Public Hearing date (April 25<sup>th</sup>) 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 24 – 26, 2011 from 8:00 a.m. – 4:00 p.m.**

Motion by Councilor Copp, seconded by Councilor Stiles, to set a Public Hearing date of April 25<sup>th</sup> 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 24 - 26, 2011 from 8:00 a.m. - 4:00 p.m.

VOTE: 7-0

UNANIMOUS PASSAGE

## **V. NEW BUSINESS**

**Councilor Turner** – None

**Councilor Copp** – He is looking forward to the Bateman project. This is the biggest project to come to this Town in a long time.

**Councilor Porter** – Congratulated Madam Chair for the longest meeting in history. The Storey family wins the Filibuster of the Year Award.

**Councilor Perfetti** – None

**Chairman Storey-King** – On Sunday, May 1<sup>st</sup> at 3:00 p.m., the band Enter the Haggis will be playing at the Middle School to benefit the victims of Japan.

**Councilor Stiles** – Respectfully reminded the Chair that tabled motions are non-debatable.

**Councilor Moriarty** – None

**Town Manager Shane** – None

## **VI. ADJOURNMENT**

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

VOTE: 7-0                      UNANIMOUS PASSAGE

TIME: 12:00 a.m.

Respectfully submitted by,

Brenda L. Moore  
Council Secretary