

# MINUTES

Cumberland Town Council Meeting

Town Council Chambers

**MONDAY, June 18, 2012**

**5:30 Nominating Committee**

**6:00 p.m. Workshop**

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

**6:00 p.m. Workshop** re: Discussion of Contract Zone Agreements for Route 100 properties.

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

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

### **I. APPROVAL OF MINUTES**

Motion by Councilor Copp, seconded by Councilor Turner, to accept the June 4, 2012 minutes as presented.

VOTE: 7-0

UNANIMOUS PASSAGE

### **II. MANAGER'S REPORT**

The Tuttle Road sidewalk project will begin this week. The sidewalk will begin at the Commons and go to Town Hall.

This Saturday, at the Public Works facility on Drowne Road, there will be a universal waste day.

Residents can drop off computers, televisions, air conditions, fluorescent light bulbs, etc. (the items that were not accepted during bulky item pick up week). Proof of residency will be required.

### **III. PUBLIC DISCUSSION**

None

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

#### **12 – 093 To swear in newly elected Town Councilors.**

Town Clerk, Tammy O'Donnell gave the oath of town officer to Councilors Turner, Copp, and Storey-King who were re-elected on June 12<sup>th</sup> for another three year term.

#### **12 – 094 Election of Council Chair and Vice-Chair.**

Chairman Perfetti thanked the Town Manager and the Council for their patience and guidance during his year as Town Council Chairman.

Councilor Stiles nominated Councilor Moriarty as Council Chair.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to elect Councilor Moriarty as Town Council Chair.

VOTE: 6-0-1 (Moriarty abstained)

MOTION PASSES

Councilor Perfetti nominated Councilor Stiles as Council Vice-Chair.

Motion by Councilor Perfetti, seconded by Councilor Moriarty, to elect Councilor Stiles as Town Council Vice-Chair.

Councilor Moriarty took over as Chairman, thanking Councilor Perfetti for his hard work and dedication during the time he served as Town Council Chairman.

**12 – 095 To hold a Public Hearing to consider and act on draft amendments to the Contract Zone Agreement for Small’s Brook Crossing, as recommended by the Planning Board.**

Finance Director, Alex Kimball explained that the Planning Board recommended minor changes to the Contract Zone Agreement.

Chairman Moriarty explained to the public that this particular Contract Zone was adopted in 1991 and this is the first amendment since that time. There have been a number of workshops on this item, and it has gone to the Planning Board for their review and recommendation.

Public discussion: none

Motion by Councilor Perfetti, seconded by Councilor Stiles, that the attached proposed Amendments to the Second Amended Contract Zoning Agreement by and between the Town of Cumberland and George R. Rickley relating to the Small’s Brook Crossing Subdivision be accepted (a) capping the interest on the Town’s silent second note and mortgage; (b) clarifying that the owners may pay off that mortgage voluntarily; and (c) allowing a short-term rental.

VOTE: 7-0 UNANIMOUS PASSAGE

**12 – 096 To hear a report from the Finance Committee Chair and to authorize the Town Manager to transfer inter-departmental operating funds for FY’12.**

Councilor Stiles, Finance Committee Chairman, explained that this fund transfer is done annually. It allows the Town Manager to spread out monies between inter-departmental accounts in order to close out the current year budget. It also allows the transfer end of year fund balances (to accounts listed below).

Motion by Councilor Stiles, seconded by Councilor Storey-King, to authorize the Town Manager to make interdepartmental fund transfers between Departments to close-out the FY 2012 budget.

VOTE: 7-0 UNANIMOUS PASSAGE

Motion by Councilor Stiles, seconded by Councilor Gruber, to authorize the Town Manager to transfer end of year fund balance to the following accounts:

Twin Brook Fund	\$ 231,369
Senior Circuit Breaker Fund	75,000
Road Improvement Fund	95,000
Equipment Reserve Fund	150,000
Val Halla	58,000
General Fund	80,000

VOTE: 7-0 UNANIMOUS PASSAGE

**12 – 097 To authorize the Town Manager to execute a Tax Anticipation Note with Bath Savings Institution for FY’13 at an interest rate of .78% and a total of \$2,750,000.00.**

Town Manager Shane explained that a Tax Anticipation Note is taken annually. Taxes are due in September and March of each year. The monthly payment due to the School Department alone is a little over \$1.1 million each month. Between July 1<sup>st</sup> and the time the first school payment is due, the Town does not collect enough money in taxes. Therefore, the Town borrows money each year in anticipation of tax payments. We received a very low interest rate on the note from Bath Savings.

Councilor Copp advised the public that this was put out to bid to four different banks and Bath Saving offered the lowest interest rate.

Councilor Stiles said that the Finance Director receives advances of the money on an as needed basis, not the full amount all at once.

Motion by Councilor Stiles, seconded by Councilor Gruber, to authorize the Town Manager to execute a Tax Anticipation Note with Bath Savings Institution for FY'13 at an interest rate of .78% and a total not to exceed \$2,750,000.00, per the Town Council Resolution included in the meeting materials that states, pursuant to Section 5771 of Title 30-A of the Maine Revised Statutes, as amended, the Town Treasurer is hereby authorized and empowered to borrow money from time to time during the fiscal year ending June 30, 2013 in the principal amount or amounts not exceeding \$2,750,000 at any one time outstanding, in anticipation of the collections or receipts from taxes, by the issuance of tax anticipation notes of the Town, each of which notes shall be designated "Town of Cumberland 2013 Tax Anticipation Notes." All of such tax anticipation notes, and any extensions, renewals or replacements thereof, shall be signed by the Town Treasurer and countersigned by the Chair of the Town Council, shall be payable on or before June 30, 2013, out of money raised by taxation during the fiscal year ending June 30, 2013, shall bear interest payable at maturity at a rate determined in the manner as approved by the Treasurer, and shall contain such other terms and provisions, not inconsistent herewith, and be in such form, as shall be approved by the officers signing the same, whose approval shall be conclusively evidenced by their execution thereof, and

Be It Further Ordered that the Treasurer is hereby authorized to negotiate the interest rate, maturity and other terms and conditions of the notes with whatever financial institutions the Treasurer deems appropriate and to award the notes to such financial institution or institutions, and

Be It Further Ordered that the notes authorized by the foregoing are hereby designated as qualified tax exempt obligations for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended, and

Be It Further Ordered that the Treasurer of the Town be authorized to covenant with the purchasers of the notes on behalf of the Town and for the benefit of the holders of the notes, that the Town will take whatever steps, and refrain from taking any action, as may be necessary or appropriate to ensure that interest on the notes will remain free from federal income taxes, including without limitation, the filing of information returns and reports with the Internal Revenue Service and the payment of any rebate due to the United States of America.

VOTE: 7-0

UNANIMOUS PASSAGE

**12 – 098 To consider and act on Commercial Hauler's license renewals for FY'13.**

Councilor Stiles asked the Manager if we require certificates of insurance from these trash companies.

Town Manager Shane responded that we do and have them on file.

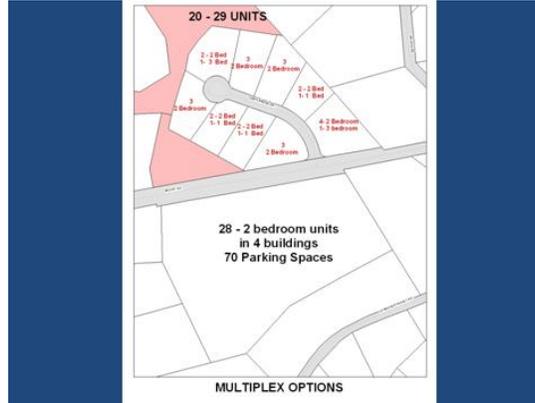
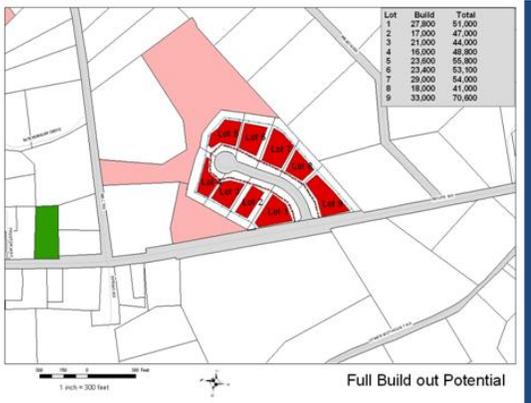
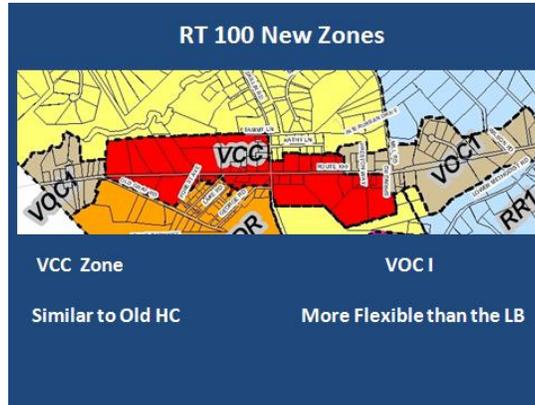
Motion by Councilor Perfetti, seconded by Councilor Turner, to approve the Commercial Hauler's license renewals for FY'13.

**12 – 099 To hear a report from the Ordinance Committee re: Contract Zone Agreements for Telos Capital, LLC and Walnut Hill, Inc. for two affordable housing projects on Route 100.**

Chairman Moriarty explained that the Council began their meeting this evening with an hour long workshop on this topic. Many members of the public also attended the workshop.

Town Manager Shane presented the following:

# Route 100 Affordable Housing Proposals



Route 100 Affordable Project  
Neighborhood Meeting Notes  
June 6, 2012

- 16 Families represented – 20 members of the public
- 1 person from each developer
- Engineer from 1 developer
- 5 Town Councillors

Route 100 Affordable Project  
Neighborhood Meeting Notes  
June 6, 2012

Questions and comments:

- Has a cost-benefit analysis been done?
- Are we mandated to have affordable housing?
- Change the zoning to include residential instead of a contract zone.
- Too many houses on the open field.
- What is Cumberland's foreclosure rate?
- Are there vernal pools on the properties and won't the setbacks lessen the number of houses?

Route 100 Affordable Project  
Neighborhood Meeting Notes  
June 6, 2012

Questions and comments:

- How do these projects compare with Crossing Brook?
- Looks like several houses will be constructed in the fill area.
- Should have a sidewalk to the WC Fields.
- How many kids do you expect?
- Why give up on the commercial plan? Too early to change directions.
- What is the long-term impact on the Town?
- Turnpike exit in West Cumberland?
- Lots are too big in RR1, should be smaller lot sizes throughout the zone.

Route 100 Affordable Project  
Neighborhood Meeting Notes  
June 6, 2012

Questions and comments:

- A lot of other residential properties in Cumberland that would be better suited for this.
- Once the commercial land is gone, it can't be replaced along the Route 100 Corridor.
- Ron Copp & George Turner will be recusing themselves from any Town Council discussion.
- What was the selling price for both properties?
- The Town was never business friendly in the past. Some of the slow start on Route 100 may be due to perception that the Town does not want business.

Route 100 Affordable Project  
Neighborhood Meeting Notes  
June 6, 2012

Questions and comments:

- How about a mixed use zone where businesses could be on front lots and houses in the rear?
- How about the rear Town land be sold to the developer and the lot sizes are increased?
- Can each project on Route 100 be looked at independently or must they be packaged as one project?

Route 100 Affordable Projects

Neighborhood Stats - Children per household

1989 - 1992	0.79
1993 - 1996	1.14
1997 - 2000	0.91
2001 - 2008	0.40

Route 100 Affordable Projects

Average Daily Traffic Counts - Town Wide

RT 9- at Tuttle	7650	Middle	2950
Rt 1- Yarmouth TL	7000	Rt 88	2890
RT 9- at Corey	4910	Blackstrap	2850
Blanchard	3790	Winn	2690
Tuttle	3230	Skillins	2340

2006 2007 2010 Loss

Rt 100 @ Gray TL	6310	5940	5300	16%
@ Blackstrap	6010	5870		2%

Route 100 Affordable Projects

Next Steps:

1. Decide what direction you wish to proceed this evening
2. If in Support- Send Project to Planning Board at your July 9, 2012 Meeting
3. Planning Board Meeting August 21<sup>st</sup>
4. Back to Town Council Sept 10<sup>th</sup>
5. If Positive Vote- Back to Planning Board for Subdivision review in September or October

Town Manager Shane explained that this is a small view of the project. It would add diversity into the community, which is an important goal in the Comprehensive Plan. The Council has the authority to move the project forward if they choose to.

Chairman Moriarty explained that there will be no Council action on this item this evening, only discussion. There are many people in the audience whom he will allow and encourage to speak and ask questions about the project.

Scott Lalumiere, one of the developers of the Castle Rock property, said he is here this evening to answer any questions in regard to the Castle Rock portion of the project.

Councilor Perfetti asked Mr. Lalumiere why not build multiplexes, since multiplexes are allowed in the zone now and would not require a contract zone agreement.

Mr. Lalumiere responded that generally speaking, any construction activity is very hard to finance these days, particularly multiplex and condominium style homes. Financing for the builder is difficult, but particularly difficult for the buyer. That is not a method of ownership that he is interested in pursuing. Mr. Lalumiere went on to say that when this project is completed, the homes are going to be attractive and energy efficient.

Chairman Moriarty gave some background regarding the zoning in the area. The zoning on Route 100 consists of 5 separate zones that were adopted in October 2007. Prior to the formation of the Route 100 Advisory Committee, there were only 2 zones along the Route 100 Corridor. The Advisory Committee focused most of the commercial activity in the center (Blackstrap/Skillin Road area), and building out north and south from the center with more commercial activity, but with diminishing intensity and variety of uses as you moved away from the center. After a significant amount of discussion, the Committee chose not to allow single family housing to the VOC1 zone.

Chairman Moriarty explained that the Council has granted Contract Zoning over the years, most recently for the Credit Union on Main Street, as well as two separate senior housing developments.

Councilor Stiles said that there has already been single family construction in the area because DOT would not allow driveway access for commercial development. There are two separate people interested in developing these parcels after a considerable amount of time where there was no commercial interest in that area. There is no turnpike access, the traffic counts are too low to attract new business and the current businesses need more people living in that area. He feels that we need affordable housing in Cumberland so our children can afford to stay here. He would favor this proposal.

Councilor Perfetti said that he supports the idea of affordable housing. He is hoping for the best policy tool to make it happen. He is not opposed to contract zoning, but he needs to understand if a contract zone is allowed in this area. If a contract zone is granted, the two properties are a very small portion of the entire zone. He pointed out the multiplex units are allowed, therefore, residences are allowed. This proposal is for residences, which just happen to be single family residences. There are already existing single family homes in the zone, so given these circumstances, why not a contract zone?

Chairman Moriarty said that he is very conflicted on this issue. During the workshop when people spoke about the need for affordable housing, he couldn't agree more. However, the Route 100 Advisory Committee deliberately excluded single family homes from the zone. This was done with a lot of discussion, public input, and Planning Board & Town Council approval. Chairman Moriarty said that he feels some allegiance to that

process as well as concern to abutting land owners whose values may be impacted. He is concerned about the magnitude of change in a relatively small area.

Councilor Storey-King said that there has been a lot of discussion amongst the Ordinance Committee regarding a zone change to allow the use, and then a contract zone to allow the lot size. To issue a contract zone, there has to be a public benefit. The affordability piece fulfills the public benefit. These 2 proposals come from local developers (Ben Grover & Scott Lalumiere) and that has some merit for her. On the flipside, once the commercial property is lost, it cannot be brought back. It has been many years with nothing happening there commercially.

Nick Knight of West Cumberland said he is happy that the Council is thinking and debating this issue. He said that he was here 6 years ago speaking about his opposition to commercial development in this area. He thinks that residential development in this area is a good idea and he has always felt that way. His problem with this project is ½ acre zoning next to people with 4 acre zoning. It's not fair to the 4 acre zoned owners living right next to it. He feels that affordable housing is good and it should be done, but there are other places in town that make more sense. Perhaps make this project 2 acre zoning, but not ½ acre.

Pete Wilson of Oak Ridge Road, (son of Doris Wilson, who is attempting to sell a lot for one of the proposed developments) asked how many Council votes it will take to pass this on to the Planning Board.

Chairman Moriarty answered 4.

Mr. Wilson said that there is infinite permutation and agonizing that can take place on this decision. He urged the Council to vote to send this to the Planning Board or not, but to make a decision either way, please. He also feels that ½ acre lots will not affect the value of the abutting 4 acre lots.

Chairman Moriarty asked Real Estate Broker, Anne Cianchette, if she could answer the question regarding the effect on the value of abutters property.

Ms. Cianchette said that in her personal and professional opinion, having a neighborhood of ½ acre lots will be more valuable to an abutter than having 1 acre commercial lots in the neighborhood. In her experience, buyers generally want to live near other houses.

Todd Settle asked Ms. Cianchette how multiplexes would affect the surrounding homes values vs. single family homes.

Ms. Cianchette responded that it would depend if they were rental units (apartments) or owned attached houses. If they were owned, the value would be better for the surrounding neighbors.

Bob Coulliard, Lower Methodist Road, said that his preference would be to keep the zone commercial. He would not want to see multiplex units unless they were very well thought out. The neighbors are having a hard time understanding why they are not allowed to subdivide their lots.

Councilor Perfetti feels that another workshop is necessary to get more information.

Chairman Moriarty suggested a non-council meeting date to hold a workshop to discuss this further.

Councilor Storey-King said that if this is amended to 1 acre lots, she will not vote in favor of the project. If the lot size is increased, the affordability factor is lost. We already have "market value" homes going in on the

Doane property, and affordable housing is still a need. She is ready to vote on July 9<sup>th</sup> and move this forward. She is not in favor of a workshop to discuss it further.

Councilor Stiles said that in order to be fair to everyone involved, a decision needs to be made. He is in favor of acting on July 9<sup>th</sup> to send it to the Planning Board.

Chairman Moriarty closed the public discussion.

Chairman Moriarty referred to the zoning ordinance, which reads: *the Town Council shall hear the request for a contract zoning proposal (which they have done) and decide whether to continue consideration of the proposal by referring the matter to the Planning Board for an advisory recommendation.* That is where the Council is now, they are hearing the request and have to decide whether to pass it on to the Planning Board, or not.

Chairman Moriarty asked the Council if it is their intent to act on this item on July 9<sup>th</sup> and consider sending it to the Planning Board for their consideration. (Gruber, Stiles, Perfetti & Storey-King all responded yes). This item will be on the July 9<sup>th</sup> Town Council agenda, for action, phrased in such a way that the Council will determine whether or not to forward this request to the Planning Board for their recommendation pursuant to Section 606.3 of the Zoning Ordinance. The public is welcome to come back on July 9<sup>th</sup> and will be given an opportunity to speak again.

**12 – 100 To consider and act on amendments to the Victualer’s License Ordinance as recommended by the Ordinance Committee.**

Chairman Moriarty explained that the State changed the law regarding the authority of local health inspection officers. The new proposed ordinance allows the local health inspector to inspect non-profits establishments only, and issue temporary Victualer’s licenses (such as temporary vending units at the fair).

Town Manager Shane said that there was some discussion at the Ordinance Committee meeting about omitting the language that limits Victualer’s Licenses to 12 events per year.

Councilor Storey-King agreed. If the Lyons Club has 15 events per year, we are not going to say sorry, but you’ve met your maximum of 12 per year. That makes no sense.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to repeal the current ordinance and replace it with the Town of Cumberland Temporary Victualer's License Ordinance, provided that the language restricting the activity to 12 events per year be stricken.

VOTE: 7-0 UNANIMOUS PASSAGE

**12 – 101 To set a Public Hearing date (July 9<sup>th</sup>) to consider and act on a Mass Gathering Permit for the Maine Principals Association High School Class A, B & C Regional Cross Country Championships to be held on Saturday, October 20<sup>th</sup> from 9:00 a.m. to 3:00 p.m. at Twin Brook Recreation Facility.**

Motion by Councilor Gruber, seconded by Councilor Perfetti, to set a Public Hearing date of July 9th to consider and act on a Mass Gathering Permit for the Maine Principals Association High School Class A, B & C Regional Cross Country Championships to be held on Saturday, October 20th from 9:00 a.m. to 3:00 p.m. at Twin Brook Recreation Facility.

VOTE: 7-0 UNANIMOUS PASSAGE

**12 – 102 To set a Public Hearing date (July 9<sup>th</sup>) to consider and act on a Mass Gathering Permit for the New England High School Athletic Council Cross Country Championships to be held on Saturday, November 10<sup>th</sup> from 9:00 a.m. to 3:00 p.m. at Twin Brook Recreation Facility.**

Motion by Councilor Perfetti, seconded by Councilor Storey-King, to set a Public Hearing date of July 9th to consider and act on a Mass Gathering Permit for the New England High School Athletic Council Cross Country Championships to be held on Saturday, November 10th from 9:00 a.m. to 3:00 p.m. at Twin Brook Recreation Facility.

VOTE: 7-0

UNANIMOUS PASAGE

**12 – 103 To accept donations on behalf of the Fire Department in memory of William Lyford and Beatrice Burnell in the amount of \$320.00 to be used to purchase equipment.**

Motion by Councilor Perfetti, seconded by Councilor Storey-King, to accept donations on behalf of the Fire Department in memory of William Lyford and Beatrice Burnell in the amount of \$320.00 to be used to purchase equipment.

VOTE: 7-0

UNANIMOUS PASSAGE

**12 – 104 FY'13 Town Council Committee Assignments.**

Chairman Moriarty said that the only changes to the Committee Assignments for FY'13 will be that Councilor Gruber is replacing him as the Planning Board liaison and Councilor Perfetti has stepped down as liaison for the Val Halla Board of Trustees.

Motion by Councilor Gruber, seconded by Councilor Stiles, to approve the Town Council Committee Assignments for 2012-2013 as presented.

VOTE:

**12 – 105 To appoint members to various Boards/Committees.**

Councilor Copp explained that the Nominating Committee interviewed 2 candidates earlier this evening who are interested in serving on a Board or Committee. Ted Chadbourne was also scheduled to be interviewed, but was unable to attend.

Motion by Councilor Copp, seconded by Councilor Perfetti, to appoint the following to a board/committee: Kate Baldacci to the Cumberland Energy Advisory Committee, and Sally Pierce to the Board of Appeals and the Rines Forest Committee.

VOTE: 7-0

UNANIMOUS PASSAGE

**12 – 106 To consider and act on cancelling the June 25<sup>th</sup> Town Council meeting.**

Chairman Moriarty explained that the Council regularly meets on the 2<sup>nd</sup> and 4<sup>th</sup> Monday of each month. Because of the Primary Election and the Town Council Chambers being set up for voting, the meetings in June were shifted to the 1<sup>st</sup> and 3<sup>rd</sup> Monday.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to cancel the June 25th Town Council meeting.

VOTE: 7-0

UNANIMOUS PASSAGE

**V. NEW BUSINESS**

**Councilor Turner** – He received a call from John Painter who wanted to make sure that his resource protection issue is addressed. The State allows municipalities to keep an area in resource protection or revert back to Shoreland zoning. Councilor Turner advised Mr. Painter that the Council would deal with this at a later date.

Councilor Moriarty said that Councilor Turner could get back to Mr. Painter and advise him that his request has been made, and the Ordinance Committee will take the matter up and report to the Council.

**Councilor Copp** – There have been reports of lawn care companies syphoning water from streams around Town. If anyone sees this happening, please notify the police.

**Councilor Storey-King** – Congratulations to the Stiles family for an upcoming wedding. Councilor Stiles granddaughter is getting married soon.

**Councilor Perfetti** – None

**Chairman Moriarty** – None

**Councilor Stiles** – He has a new great-grandson.

There is a new putting green at Val Halla. It is important to note that the monies for this have come from donations or grants.

**Councilor Gruber** – Thank you to Public Works for cutting the “State” grass on Route 88.

The Chebeague/Cumberland Land Trust had an event welcoming the horseshoe crabs coming to shore at the Payson property.

Asked the Manager for an update on the Railroad gates on Greely Road.

Town Manager Shane responded that the Railroads target is to have it complete in June. Their issue has been the coordination of signals where the tracks change over heading to Brunswick and Lewiston. That is all connected to the Greely intersection as well.

**Town Manager Shane** – There was a report of a large sinkhole that developed in a driveway on Ledge Road last week. It was approximately 4 ½ feet deep by 6 feet in diameter. It happened very quickly and the homeowner was fortunate that he did not drive into it upon returning home. It was likely caused by the poor soils along our coasts and ground water following the conduit, taking away the soil underneath. The Town is working with the homeowners association to get some answers as to why it happened and to try to avoid it happening again.

A Freedom of Information Act request came in today in regard to the Drowne Road School. The Manager said he has no idea what this request is about and it will take a lot of time to gather the thousands of documents.

## **VI. ADJOURNMENT**

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

VOTE: 7-0

UNANIMOUS PASSAGE

TIME: 9:07 p.m.

Respectfully submitted by,

Brenda Moore  
Council Secretary