

MINUTES
Cumberland Town Council Meeting
Town Council Chambers
MONDAY, February 13, 2012
6:00 p.m. Workshop
7:00 p.m. Call to Order

6:00 P.M. WORKSHOP with Ordinance Committee re: Fireworks

7:00 P.M. CALL TO ORDER

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

I. APPROVAL OF MINUTES

January 23, 2012

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

VOTE: 7-0 UNANIMOUS PASSAGE

II. MANAGER'S REPORT

- Manager Shane notified the Town Council that he received the letter of approval for the 2009 Town of Cumberland Comprehensive Plan from the State Planning Office today. It is both complete and consistent with the Maine Growth Management Act. The Comprehensive Plan Committee started work on this project in 2006 and submitted the plan in 2009 to the State.
- The Town has received a donation of \$400.00 for the Veteran's Monument from the Recreation Department and MSAD #51 PTO organization.
- Nomination papers available March 19th to be turned in by May 2nd at 5:00 p.m.
Manager Shane explained that nomination papers for the June 12, 2012, Municipal Election will be available at the Town Clerk's office on March 19, 2012. The papers will be due back to the Town Clerk by May 2, 2012, at 5:00 p.m. Councilor Turner wanted to let everyone know that our former Town Councilor, Jeff Porter, will be running for the School Board seat and believes this will be a good thing.

III. PUBLIC DISCUSSION

Mr. Mike Timmons thanked the Town and specifically the Town Manager, for all the support that they have given the Cumberland Farmers Club. Mr. Timmons asked the Council for their support of an upcoming Family Day Event at the fairgrounds on May 5, 2012. This will be a fundraiser for Make a Wish Foundation and the Barbara Bush Children's Unit at Maine Medical Center. The Council voiced their support for this endeavor.

Mr. Skip Howison of Mere Wind Drive spoke in regard to the senior shellfish license fee increases. Mr. Howison stated that last year he came to get his license and received the license free, as he was 62 or older. Fast forward to last month when he came to get his license and discovered that the license would now cost him \$35.00 as the ordinance had been amended from a free senior license for age 62 and above, to a \$10.00 license for age 70 and above, with a fee of \$35.00 now up to age 70. "Two things came to mind; I have never witnessed the Town of Cumberland going backwards on senior citizens. Number two, how am I going to get up and down that gulley when I'm 70 years old?" Mr. Howison stated that he requested some lists from the clerk's office and was surprised to discover that as of today, there are 39 residents that have licenses; there are 39 non-residents that have licenses. There is a portion of the non-residents who have their license for free with a \$10.00 conservation fee. "I can't understand why a non-resident 70 years of age is getting their license for free, while I am paying a \$35.00 fee." "I

hope that if you feel my argument has any merit at all you will kick this back to the shellfish commission for review. I would love to see this come back to the 62 years of age for free.”

Chairman Perfetti asked Mr. Howison what his wishes were for tonight. “Did you wish to have some dialogue regarding this issue tonight?” Chairman Perfetti explained that he heard his concerns however there had been previous discussions regarding the issue when the changes were made. Mr. Howison stated that it was up to the Council where they wanted to go with this.

Mr. Harold Larrabee of Maple Street stated that he has lived in Cumberland for 39 years. “I am here a resident and a taxpayer. I do not understand, reading the ordinance, on the shellfish fee, why the fees for regular shellfish licenses are more for non-residents vs. residents, but when you get to the senior license fees, the non-resident fee is the same as a resident fee. I am in the same boat as Mr. Howison. I received my first free license last year, but when I went to the Town Office in December to get my free license and was told that it was not free anymore because of an ordinance change. There is now a \$10.00 conservation fee. I checked the definition section of the ordinance, and there is no definition of a conservation fee. What is the definition of a conservation fee and what is the fee going to be used for? I would like to see the people who qualified in 2011 for free licenses to be grandfathered, or at least give it some thought.

Chairman Perfetti thanked Mr. Larrabee for coming and expressing his concerns.

Mr. Paul Greenwood of Greely Road stated that he also received a free license last year. After going to Town Hall, he questions why the fee is increasing. Mr. Greenwood stated that he has not seen any real management of the marshes or waterfront, in fact, “I believe they have been mismanaged. In fact for years we have been able to dig clams year round. However, for years now, the flats have been closed due to pollution. I am wondering how this decision came about, and what is the fee increase used for?”

Mr. Joe Raynes of Turkey Lane stated that he also had a free license last year. “What was the rationale behind the increase of these fees as far as age 62 to age 70? I just do not see the point behind it, and I totally disagree with it”.

Mr. Harland Storey of Middle Road stated that he is on the Shellfish Committee. “First off, the Town does not have any say in when the flats are open or closed. The only thing the Town controls is the shellfish licenses. There are too many people in this town that expect something for nothing. I maintain that if you use it you pay for it. Why should we expect the taxpayers to pay for us to dig clams? Our fees are consistent with surrounding towns”.

Mr. David Small of Maurice Way stated that he did not feel that the non-resident fee for \$10.00 is fair at all. “The non-residents have given nothing to the town. I myself feel that that should be addressed.”

Chairman Perfetti stated that the clam flats have not been mismanaged. “In fact, they have been managed really well given what we had to contend with. We have had to expend what some might say have been an inordinate number of hours to prove that we can keep them open. The conservation fee as I recall, was a small token for that effort.”

Councilor Turner addressed Mr. Greenwood’s concern about the management issue. “The fact is, the clam flats have been managed as well as the town could have managed them. You need to remember that the State controls the opening and closing of the flats based on their judgment of the pollution issues. We have had a lot of volunteers who have given their time to take testing at various locations along the shorefront to make sure that when those readings are appropriate, we can get some kind of permission from the state to let us open up. The benefit from that is that the state has worked

reasonably well with us and as a result, we have been able to open some of the clam flats. If we had not had the volunteers and the work done there, we would still have the flats closed. The fact is that when the Route 88 project was done, a huge part of that project was to fix the drainage issues that led to some of the problems. There have been a lot of things done to the extent that the Town can do it.

Councilor Copp stated that he agreed with Mr. Small, no resident should pay more than a non-resident.

Councilor Storey-King stated that she would like to go back to this issue when it came to the council. "In the last two years, we have spent over \$1,200.00 in independent shellfish testing. It is because of the work of our Shellfish Commission that our flats are even open. You can't buy a peck of clams for \$35.00. It is not even something for nothing. I'm very sorry if it seems like a give me and a take away. The commission has done a great job. The town has been good stewards of our waterfront."

Councilor Stiles stated that, "this \$10.00 conservation fee was designed to help with the additional testings to help try and locate the pollution and remediate it. That \$10.00 was added to everybody. It was used to supplement what the state was doing. The state was doing their hit or miss testing and by us doing it more periodically, we could show that the waters were cleaner. We have members of our Police Department going down there periodically. I would encourage the people who spoke here tonight to get involved with the Shellfish Committee".

Chairman Perfetti stated that the Commission did come to the Town Council. "I for one am in Harland's camp on this. I asked them to go back and assess some type of fee because clamming for free does not represent what it costs the Town."

Councilor Gruber stated that he was on the Shellfish Commission when the ordinance was amended. "There was no pushback and it was unanimous. We did have public comment and we did have public hearings on this subject. We can bring this back to the commission for more discussion and I think that is the right thing to do."

Manager Shane stated that there is a lot of history here that people need to be educated on. "Our flats were closed for two years. During those two years, the Shellfish Commission committed to many meetings and many strategies while working with the Department of Marine Resources. We did a shoreline survey of the entire shoreline, we worked with committee volunteers, the Police Department, our IT Director, Steve Sloan from Portland Water District, and several others to help us get these flats back open again. We also did monthly testing for the last two years and continue to do that. Several years ago, we went to a lottery system. Several years ago, we had 100 plus non-resident licenses. Today we have 40. Of those 40 licenses, 25 of them were given to people who volunteer and do surveys with the town. They have to put in 20 hours, and they have to be there and be monitored. They do an excellent job. The other 15 people go into the lottery. We have an absolutely amazing Shellfish Commission. These people have been working their tails off. They attend many meetings, they do outreach programs, and they are truly dedicated to this effort. There really is a lot going on and the commission has done a lot of work. I strongly encourage you to participate in the commission. The licensing fee will be brought back to the commission."

Councilor Moriarty asked the folks here tonight to fill out applications for the committee. He added that as a member of the Town Council, he has been extremely impressed with the Shellfish Commission. "It is obvious the incredible amount of work these people put in for the preservation of this resource for the town. You pointed out some things this evening that need some attention and they will be addressed. Thank you Manager Shane for the very concise and thorough explanation of the details that over time sometimes are forgotten."

Councilor Storey-King stated that she knows the audience members came tonight because they want to know what they are getting for their money. “I hope that tonight you got some answers as to what you are getting for your money.”

Mr. Howison stated that he would like to make a short rebuttle to what he has heard tonight. “The idea that if you clam you must pay, I could make another argument. I have never had any children in the Cumberland school district, I never will. 77% of my tax dollars go to the school department. What do I get out of that? Nothing. Second, I believe I heard from both Storey’s that last year’s fee was \$25.00 that is incorrect, last year the license was free. Third, I heard that our fees were in line with surrounding municipalities. That is incorrect. If you go on line, to the Town of Falmouth’s site, you will find that age 62 and older license is free for both residents and non-residents.”

Mr. Harland Storey stated that the age 70 requirement came from being in line with the State of Maine. “You do not get a free hunting & fishing license from the state until age 70.”

Chairman Perfetti stated that he would like to wrap up this issue. “I believe we have heard, clearly some of the concerns that need to be addressed, particularly non-residents. Beyond that, the Council, generally speaking, seems satisfied with the ordinance as it is. This will be referred back to the Shellfish Commission.”

Mr. Brad Hilton of Greely Road spoke regarding two issues. “I would like to issue a challenge to other Greely classes to make donations to the Veteran’s Monument fund. I am a Greely graduate; we ought to have a contest to see what class can come up with the highest contribution. The second issue is one that I feel is important. I am looking at ways to decrease the cost of Government. I would like to get the opinion of the Town Council on why we are in the business of having a Municipal Golf Course. I think that there ought to be some consideration as to whether this asset can be sold, and start reversing the situation and start getting some real estate taxes out of it.”

Chairman Perfetti asked members of the Council to address the issue. “This is similar to the issue just discussed. This is like any other facility that the Town provides. No, it is not 100% paid for, but it is a benefit for some people who don’t get any other benefit. I also laughed when you said perhaps we have looked at this issue several times. Several times would not even begin to tell you the number of times that this issue has been looked at. Here is where I would give the Manager all the credit. He saw a situation, where the financial position was not where we wanted it to be. The Manager saw the problem very quickly, and over the last nine years started to fix it. We are in the last stages of clearing this up.”

Councilor Gruber stated that, “I feel like somewhat of a rookie to even discuss this issue. I am however, on the Finance Committee, and we did just recently discuss it again. It is an issue and I hear from residents throughout Cumberland about why we have a municipal golf course.”

Councilor Stiles stated that we continue to look at the issue. “There is one problem. Because of the initial financing of the golf course, we can only sell half of the course. It does provide a wonderful opportunity for the town. We are working very hard to make it a breakeven situation.”

Councilor Moriarty stated that he could only ditto what Councilor Stiles had just said. “The Council is on this thing and looking at it all the time, as is the appointed Val Halla Board of Trustees.”

Councilor Storey-King stated she really did not have anything to add. “I ask the same question every budget year. Can we sell it? I would like thank you for your alumni suggestion, it is a good one.”

Councilor Copp stated that this has been an ongoing problem. “I think the golf course is in better shape now than it has ever been. I think if the Town ever did sell it, they would regret it.”

Councilor Turner stated “that the Council has known about the deficit for years. Having sold half of that building off, the golf course is not breaking even yet, but has a possibility of doing so. There are just so many other uses. I think it is too bad to have the Council making these comments, rather than having the Manager tells us what he knows.”

Town Manager Shane stated that Mr. Hilton brings up a good point. We have over 450 kids that are in junior golf right now at Val Halla. Val Halla was actually Cumberland’s first open space. The front nine was purchased with a federal grant and that’s the piece that we can’t sell. The back nine we could sell and that would be the Council’s prerogative. We have gotten out of the banquet business. We have now paid off the debt on that building and sold it to MSGA for \$515,000.00 just this past year, so we are moving in the right direction. We have gotten out of the food business. The former Viking Grill has been leased to Lowell and Lloyd Smith. We have cut off everything except the golf piece of it. We are now within \$50,000.00, which is a lot of money, of breaking even. The losses in the past were significantly more than that. Our problem is that since the Town bought that course, there have been about 5 different courses open around us. This will be another hot topic at the budget hearings this year.”

IV. LEGISLATION AND POLICY

12 – 013 To consider and act on a tax abatement request for property located at 28 Pine Lane for taxes paid in FY’10 and FY’11.

Motion by Councilor Copp, seconded by Councilor Stiles to table this item until February 27th, 2012.
VOTE: 7-0 UNANIMOUS PASSAGE

12 – 014 To hold a Public Hearing to consider and act on amendments to Small’s Brook Crossing loan agreement.

Chairman Perfetti explained that he has met with Councilor Moriarty, and Finance Director Alex Kimball. The Council has gotten an opinion from the Town Attorney Ken Cole. This issue is a little more technical than was thought originally.

Motion by Councilor Stiles, seconded by Councilor Gruber, to table this item until February 27th Workshop and Council meeting.
VOTE: 7-0 UNANIMOUS PASSAGE

12 – 015 To hear a report and authorize the Town Manager to process Senior Circuit Breaker program payments.

Town Manager Shane explained that this program has been very successful. In 2010, we had about \$51,000.00 in requests that were paid. In 2011, we had about \$58,000.00. This year so far we have about \$84,000.00 in requests. There were approximately 125 applicants, and 98 of those were approved. We started the year with \$93,000.00 in the Senior Circuit Breaker account, and we will have less than \$9,000.00 remaining after your authorization this evening to issue the checks for the Circuit Breaker Program. “All of the residents who applied and met the deadline should be issued a rebate. Whatever is left for the year will be apportioned on the number of applicants that we get.”

Councilor Stiles asked if on approval, “are you intending to make those still waiting on paperwork qualify?” Manager Shane stated that those are included. The authorization tonight would be for up to \$85,000.00, including those in the queue.”

Councilor Gruber stated that he is all in favor of this program. However, “I think it’s time that we look at other potentials besides the Senior Circuit Breaker Program. I believe we should look at legislation public law 489, where essentially, residents over age 70 have their taxes deferred. At this time, we are not sure if this can supplement the Senior Circuit Breaker Program, or augment it in some way, or replace it. I would ask that we consider asking the Town Manager to get more information on this and bring it to us for discussion.”

Motion by Councilor Stiles, seconded by Councilor Turner, to issue payments to qualified residents for the fiscal year 2012 Senior Circuit Breaker Program.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 016 To consider and act on a Mobile Vending License for Seamus Maguire.

Motion by Councilor Copp, seconded by Councilor Turner to table this item indefinitely.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 017 To hear a report from the Town Manager re: a new road acceptance policy.

Town Manager Shane explained that this is still a work in progress. The Council requested that staff develop a policy that would look at alternatives to our present road acceptance standard. We presently do not have a Road Acceptance Ordinance. What we have is one line in the Subdivision Ordinance that says “your road may be accepted by the Town Council.” There are no guidelines, no facts; the 75% build out rule does not exist. When I presented this to the Ordinance Committee last Thursday evening, they were seeing it for the very first time. They made it very clear to me to come back to the Committee with an ordinance that would not even give us the opportunity to consider accepting a road until it got to 75%. The issue that the Town Attorney has with an ordinance is that we would be the first town in the state to say that we are not going to accept any roads. Towns do this in practice, but they never put it in their Subdivision Ordinance that they are not accepting any roads. Attorney Cole stated that if we do that, that is one flag, and the second piece would be that all roads would be private in the future, and then the Homeowners Association would have to come to the Town Council and petition them for winter plowing and sanding. Attorney Cole feels very strongly that we still have a lot of liability with regards to responsibility for defects in the road even though we have accepted public easements. I reminded him of the 25 roads we did accept by public easement and asked him to differentiate that. He came back and said those were very specific public easements and that is different than going through the subdivision process. Attorney Cole feels that this would be more problematic in the future because then the Council would be under pressure by neighbors to accept a road vs. a real ordinance that ties your hand. The ordinance says you shall do all this. Now you have the ability to change the ordinance, but it is a public process. The Ordinance Committee wanted to talk about the public easement as a separate issue. They felt that, as well as the Town Attorney felt that, the two should not be mixed together because the two mean something very, very different.”

Chairman Perfetti asked “why we can’t require a developer to build a road properly?” Town Manager Shane replied that we can. Chairman Perfetti asked “and not accept it? Because you’re choosing to build roads out in East Gish. That is putting a strain on our budget. I don’t understand why we don’t have that prerogative”. Town Manager Shane replied, “We do. It is totally up to the elected body. The problem that arises, is, if you do nothing on those private roads, than there is no

harm, no foul. However, you have required them to build to such a high standard in the Subdivision Ordinance; you might want to go back and look at that and say, if we are not going to accept these as public roads, do we want to consider a lesser standard? Then we get into public safety issues, we get into a whole bunch of things, and a potential of roads coming back to you for acceptance by future councils. As Attorney Cole outlined in his letter, if it is built to a higher standard, than there are no issues with what you are inheriting. It is a work in progress. The Road Ordinance is the easy piece. We will also draft a separate piece that talks about public easements and what will be required to follow through with that. We will be back to you on this”.

12 – 018 To set a Public Hearing date (March 26th) to consider and act on zoning amendments to the Growth & Impact Fee Ordinance, as recommended by the Planning Board.

Motion by Councilor Stiles, seconded by Councilor Moriarty to set a public hearing date of March 26th to consider and act on zoning amendments to the Growth & Impact Fee Ordinance, as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 019 To set a Public Hearing date (March 26th) to consider and act zoning amendments to Section 104.141 definition of Self Storage Facilities and to add Self-Storage Facilities as a permitted use to Section 204.9.1.29 in the Village Center Commercial (VCC) district of the Zoning Ordinance, as recommended by the Planning Board.

Motion by Councilor Copp, seconded by Councilor Gruber, to set a Public Hearing date of March 26th to consider and act on zoning amendments to Section 104.141 definition of Self Storage Facilities and to add Self-Storage Facilities as a permitted use to section 204.9.1.29 in the Village Center Commercial (VCC) district of the Zoning Ordinance, as recommended by the Planning Board.

VOTE: 7-0 UNANIMOUS PASSAGE

12 – 120 To authorize the Town Manager to endorse a PACTS project submission report for the Town of Falmouth for intersection improvements at Route 9 and Bucknam Road.

Town Manager Shane explained that the request by the Town of Falmouth would like to put in a traffic circle, a roundabout, at the intersection of Bucknam Road, Route 9, and Falmouth Road. That would eliminate the signal that is there and keep the traffic flowing through that intersection. This is very, very much in the preliminary stages. There are additional points given to a project if it has received support from the neighboring communities. It requires no financial commitment from the town.

Councilor Storey-King stated that she did not like traffic circles; they encourage bad manners.

Councilor Moriarty stated he felt that a traffic circle would be a nice improvement.

Councilor Stiles agreed with Councilor Moriarty. “I question the room available for it though.”

Councilor Turner agreed with Councilor Stiles. “I am not a fan of the small ones though.”

Councilor Copp stated that he supported it as long as they leave the center of it open.

Motion by Councilor Moriarty, seconded by Councilor Gruber, to authorize the Town Manager to submit a letter of support on behalf of the Town of Cumberland for the Town of Falmouth’s PACTS

project. The Falmouth funded project request is for the construction of a roundabout at the Route 9 and Bucknam Road intersection.

VOTE: 6-1 (Councilor Storey-King opposed)

V. NEW BUSINESS

Councilor Turner - feels it is a good thing for the Town that former Councilor Jeff Porter is running for the MSAD 51 Board of Directors. I hope everybody will think hard about supporting Jeff.

Councilor Copp - on January 30, 2012, this Town lost one of the most dedicated firefighters that it has ever had. Oland "Bud" Knight passed away. Mr. Knight had 53 years of service to the Cumberland Fire Department. He was a genuine great guy and will be sadly missed.

Councilor Copp asked Town Manager Shane, "Where we are with the Veteran's Monument and what is the deadline? Manager Shane responded that, "it has not moved much. We are still about \$8,000.00 short of what we need to complete the engraving portion of it. This will be a work in progress for several years to come. We are looking for a dedication of this May. We will be giving the names to the monument company this month."

Councilor Storey-King - two weeks ago, she had the pleasure of attending an event to honor Ken Marks, who has been the Boys Varsity Basketball Coach for 25 years. Good luck to all the Greely athletes in the next coming week.

Councilor Moriarty - a question regarding tax abatement issues: "We seem to be seeing a flurry of email regarding this issue, is this just a temporary issue, or a more consistent issue?" Town Manager Shane replied "it is consistent and has been since the revaluation." Councilor Moriarty asked if it would be appropriate if Assessor Bill Healy could report to the Council on our Tree Growth situation. Manager Shane replied that he would arrange this.

Councilor Stiles - a resident told him that they felt like we were creeping to "sign pollution". He requested that the Council think about this."

Councilor Gruber - the Strategic Thinking and Planning Committee of MSAD #51 continue to meet. They have put together some good work. That effort will be going out to the public for input.

Manager Shane - he ran into Diana Copp at the Post Office today. She has a great idea to put together a "Wall of Honor" in the Town Hall, for members of our community that are now serving in the armed forces. Chairman Perfetti stated that this is a great idea, and fully supports it.

VI. ADJOURNMENT

Motion by Councilor Stiles, seconded by Councilor Storey-King, to adjourn.

VOTED: 7-0 UNANIMOUS PASSAGE

TIME: 8:50 P.M.

Respectfully submitted by:

Tamara P. O'Donnell
Town Clerk