

AGENDA
Cumberland Town Council Meeting
Town Council Chambers
MONDAY, March 23, 2009

7:00 p.m. Call to Order

I. APPROVAL OF MINUTES

March 9, 2009

II. MANAGER'S REPORT

Nomination Papers

Petition for Council Overrule

III. PUBLIC DISCUSSION

IV. LEGISLATION AND POLICY

09 – 037. To hold a Public Hearing to consider and act on a request from Foundation 51 to conduct a star gazing event on *April 10th* or *11th* at the Twin Brook Recreation Facility beginning at 7:30 p.m.

09 – 038. To hold a Public Hearing to consider and act on sending a recommendation to the Planning Board re: changes to Section 501 (Non-Conforming Uses) and Section 423 (Shoreland Areas) of the Cumberland Zoning Ordinance.

09 – 039. To hold a Public Hearing to consider and act on a Victualer's license application from Kim Knight, d/b/a, Beach Dawgs to operate a food cart on the 9th or 10th Hole of the Val Halla Golf Course for the period of *March 23, 2009 – June 30, 2009*.

09 – 040. To set a Public Hearing date (*April 13th*) to consider and act on a Mass Gathering Permit from the Cumberland Soccer Club for a Labor Day "Just For Fun" Soccer Tournament to be held at Twin Brook Recreation Facility on *September 5th & 6th, 2009*.

09 – 041. To set a Public Hearing date (*April 13th*) to consider and adopt the revised Appendix B to the MMA General Assistance Ordinance for the period of *April 1, 2009* through *September 1, 2009*.

09 – 042. To affirm an *April 13th* date for a workshop meeting with the neighbors in the vicinity of Greely Road Extension re: a driveway extension license request from Robert Simonds.

09 – 043. To leave on the table until *April 13, 2009* the request received on *December 22, 2008* to establish a Village Center Committee.

09 – 044. To set a Public Hearing date (*April 13th*) to consider and act on adoption of the FY10 Municipal Budget.

V. NEW BUSINESS

VI. EXECUTIVE SESSION – pursuant to 1 M.R.S.A., § 405(6)(A) re: Town Manager evaluation and contract renewal.

VII. ADJOURNMENT

MINUTES

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, March 9, 2009

7:00 p.m. Call to Order

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

I. APPROVAL OF MINUTES

February 23, 2009

Motion by Councilor Stiles, seconded by Councilor Perfetti, to approve the minutes with noted housekeeping amendments.

VOTE: UNANIMOUS PASSAGE 7-0

II. MANAGER'S REPORT

Range Road reconstruction – engineer estimated a Phase One cost of between \$3.2 and \$4.2 million dollars. The low bid was received by AH Grover at \$1.7 million. Therefore, the Town Manager would like to discuss with the council at a later date the possibility of completing both phases of the project. He believes the “entire project” can be completed at the cost estimated for Phase One.

III. PUBLIC DISCUSSION

None.

IV. LEGISLATION AND POLICY

Chairman Turner addressed items 32 and 33 out of order so that they may be acted upon prior to a possible lengthy public hearing on item 30.

09 – 032 To hear a recommendation from the Lands & Conservation Commission re: request for a license to locate driveway access from Greely Road Extension.

09 – 033 To hold a Public Hearing to consider and act on authorizing a license for driveway access from Greely Road Extension.

The Town Manager deferred to Councilor Moriarty who stated he attended the meeting of the Lands & Conservation Commission last Wednesday evening where he learned that the abutters had not received sufficiently advance notice of the meeting. Because of the potential importance of this proposal “We ought to take a little bit of time...and take it up on a workshop session.” Councilor Moriarty recommended tabling both item 32 and 33 until April. Chairman Turner suggested the meeting date of April 13, 2009.

Motion by Councilor Moriarty, seconded by Councilor Porter, to table both items to the meeting of April 13th.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 030 To hold a Public Hearing to consider and act on a Contract Zone request from Atlantic Regional Federal Credit Union, for location at the former Chase Flower Shop site at the corner of Main Street and Farwell Avenue.

Town Manager Shane stated this evening represents the fourth meeting regarding this request and introduced Mr. Tom Long to present an overview of the project. Mr. Long added they have “been at this project since the middle of November.” He had three “take aways” from the neighborhood meetings and they included: the architectural rendering which included a drive-up window did not fit in the Center and was redesigned to reflect a carriage style aesthetic; many people living in the center liked to walk the Center and improving pedestrian safety was therefore important; and (3) since it was important to get a better handle on traffic, they hired Wilbur Smith Associates to analyze traffic flow for two weeks at the beginning of December. The town also hired Gorrill Palmer Engineers to conduct a “peer review.” The report of the consultants suggests that “with the advent of a branch location, there will be no discernable impact for operations on Main Street.” Mr. Long stated that since his attendance at the Town Council’s January meeting, he has continued to incorporate these points into the planning discussions. In preparation for this meeting, he suggested his “primary concern was for the two abutters” and revised the site plan to reflect the “feedback received from the resident population.”

Mr. Long provided an aerial view of the site showing a premise “architecturally different than anything else that is in the Center.” They propose to replace the building with something more suited to the area and offered a “traditional new England style” rendering, which was designed by the same architect who designed the newly-erected Twin Brook shelter. The original branch design featured 6 parking spaces and the design revision “relieves the property of any impact” by retaining the sidewalk and two parking spaces in front of the post office. He suggested pedestrian safety was improved by reconstructing the sidewalk in front of the premise and constructing a sidewalk on both sides of Farwell Avenue. The cross-walk has been relocated in order to get the benefit of the street light. A buffer, which includes a fence and architectural landscaping, is included along the abutting property to the north.

Conversations with the abutter to the north resulted in responses to the following areas of concern: a portion of the parcel is being used as part of the homeowner’s garden area, and that may continue if the property owner chooses to do so; (2) a fence with landscaping will be placed along the property line; (3) “gooseneck lamps” lighting will be utilized in order to create ‘zero photo trespassing’ and compliance with all dark-sky standards; (4) three options for atm placement were considered and a selection made to place the atm on the wall of the building. The neighbor to the south expressed two concerns: (1) the corner represents a school bus stop, and (2) the municipal easement abutting the property is currently utilized to provide relief from the accumulation of snow. He proposes this evening to remove three of the original six off-site parking spaces, leaving three others intact and maintaining the municipal easement. The proposal incorporates a sidewalk on both sides of Farwell Avenue to improve pedestrian safety. “Practically speaking we’ve improved the operating environment” through the elimination of u-turns or the need for cars parked in front of the post office to “cross the double line.”

In closing, Mr. Long provided information regarding Atlantic Regional Credit Union. “It has a strong capital position,” and a full menu suite of services. This property “has historically been zoned commercial” and “we’d like to restore it” to its original zone. To summarize, Mr. Long suggested there are many municipal improvements including sidewalk construction and reconstruction; improving the turning radius on Farwell Avenue; constructing parking spaces; green space areas for community gathering; improved streetscape; and increased tax revenue. Public benefits include: providing a financial institution to “Maine’s most populated community without a branch;” the branch’s proximity to other community activity; a new structure which fits into the character of the

neighborhood; and non-profit community-oriented benefits provided by the credit union. “You can ignore the facts, but that doesn’t change the facts.”

Chairman Turner thanked Mr. Long for his presentation. Councilor Moriarty reiterated his conflict of interest due to credit union representation by his law firm.

During the public hearing, the following persons spoke in opposition to the project request: Andrew Baca, Main Street, and the “southern abutter;” prepared remarks were read on behalf of Melissa Gattine; Carolyn Curry, 321 Main Street; Paul Soule, Balsam Drive; Martha Porch, Main Street; Mike Clark, Farwell Avenue; Bill Dexter, Hemlock Drive; Patricia Powers, Main Street; John Fitzgerald, Main Street; Cynthia Dexter, Hemlock Drive; Tom Walsh, Cottage Farms Road; Bill Follett, Main Street; and Mike Tardiff, Main Street, and the “northern” abutter. Opponents shared concerns suggesting, “It’s not the right place. We’re a neighborhood.” Traffic and traffic patterns were a significant concern. “I see a congestion that I think is going to be difficult to overcome,” remarked Mr. Soule. Mr. Dexter added that it is dangerous to exit onto Main Street from Farwell Avenue during the winter because of the snow banks. Any additional traffic “is a significant negative impact.” Ms. Porch expressed concern with the issue of contract zoning, asking, “When do we stop?” Mr. Fitzgerald suggested contract zone is “an abrogation of (the council’s) responsibility.” Mr. Clark was “not impressed” with the wasted space on the second floor of the building. Mr. Long responded the upstairs area will provide a “break room” and conferencing area, and while it is not ADA accessible, it will be open to community use. Several speakers suggested the town consider locating this branch on the “Doane Property.” Patricia Powers, stated, “The idea is very good; the placement is very bad.” Daniel Nuzzi, a Cumberland resident, spoke on behalf of the group *Save Cumberland’s Main Street*. He suggested the contract zone is poor public policy and planning and its consideration requires specific responses to public benefit and must be consistent with the comprehensive plan and other permitted uses in the zone. This represents a “drastic change to the character of this neighborhood.” A credit union serving one percent of the community “is not a public use.” We don’t need to allow a commercial use to provide a sidewalk or have a traffic benefit. He informed the council that in the event the zone is approved, the group will seek an overrule referendum.

Those speaking in support of the proposal included David Essio, Cumberland Commons, who suggested, “This is a huge improvement over what we have” from a pedestrian perspective and added this property “has been for some period of time commercial property. I don’t believe one of those businesses (existing today) could open today if they had to get the approval of their neighbors. Any bank willing to expand today is likely to be around for a while.” Jim Guidi, Hedgerow Drive, is worried about the viability of this town. “It’s the perfect spot for it,” noting the number of customers and vendors who frequent the Food Stop, without incident. Mr. Adam Dews, West Cumberland, supports the proposal and as a former Farwell Avenue resident concurred with the need to widen Farwell Avenue.

Pam Russell, Olivia Lane, noted that the credit union is entering into a lease with the owners, not purchasing the property and added if the lease does not occur, the property would likely remain undeveloped. If this project doesn’t happen, it’s likely nothing will be happening at this site for some time. She suggested that the traffic impact feared by the construction of the Main Street condominiums has not been a problem. The SAD is a “very large employer” with approximately 1500 people on the campus each weekday. Peter Bingham, Brook Road, suggested significant time has been spent by the Comprehensive Plan Committee “wrestling with Main Street.” It “will be approached from a town-wide effort.” Bob Vail, Planning Board member and resident noted that both the Food Stop and the Shell station are leases, and indicated the relationship between the credit union and the community is important. He noted that this proposal will go back to the Planning Board “where everything is on the table.” Attorney Cole clarified “everything except the drive-through” is

on the table. The Planning Board will conduct a site plan review, but “is not allowed to address the use.” Public comments closed at 9:26 p.m. and a brief recess was taken.

Councilor Porter remarked he did not have a “hidden agenda” as was charged. “We don’t make decisions...just based upon the abutters. We just don’t do that.” The traffic concerns have been addressed and will be reviewed by the Planning Board. Contract zoning is “not my preference.” However, a zone change “is more dangerous. Anything could go on. When did business become evil?” This is a credit union with strategic reserves that wants to come to our community. “I think this is something that makes our community better.” He noted the increase to the tax base, and concluded by remarking, “I am enthusiastically behind this proposal.” Councilor Copp added there is no financial institution in town now, although there was at one time. Addressing the concerns raised regarding snow, he remarked, “Our public works employees can handle the snowplowing problems. I think they’d even need a variance to build a house on this lot.” He referred to Cole Hahn as “a missed opportunity” for tax dollars, noting that the building sits only fifty feet from the town line. He does not believe the credit union will draw additional traffic. Rather, it will generate use among many who are already in the area or driving by. Councilor Perfetti said while the contract is a legitimate request, he does not support it. He is concerned with a tone regarding “picking neighbors. That’s not a power I’m necessarily comfortable with” and it’s not a good reason to approve a contract zone. “What’s the public benefit?” He believes the contract zoning on Main Street represents poor planning. “The slippery slope is here; we’re in it.” He recently introduced the idea of a Village Center Committee in order to obtain “some guidance for the council” and because he is confident that additional contract zoning requests are forthcoming. A public policy should be predictable for current and potential landowners and a contract zone does not give us that vision. Councilor Storey-King does not feel this discussion is as balanced as the Planning Board discussions. She was informed of a verbal assault to a community member after offering supportive comments. She does not believe the other two contract zone approvals have had a negative impact on Main Street. “I would like to see Main Street become a little better” and suggested the Doane property is “years away.” She encouraged green building standards. Councilor Stiles is interested in maintaining the commercial properties in town and believes the credit union “would make good sense.” It is important to rely on the professionalism of the traffic consultants and a thorough review by the Planning Board. Chairman Turner reiterated his belief that the contract zone process “has the same force and effect as...any other zone. I feel that the council takes responsibility for every action they take as far as a contract zone is concerned.”

Motion by Councilor Porter, seconded by Councilor Copp, to establish a Contract Zone Agreement by and among Atlantic Regional Federal Credit Union, Chase’s Flower Shop and Greenhouse, and the Town of Cumberland, pursuant to 30-A M.R.S.A. §4352(8) and Section 606 of the Cumberland Zoning Ordinance, for a commercial financial institution, to be located at the former Chase Flower Shop site at the corner of Main Street and Farwell Avenue, as recommended by the Planning Board, and as set forth in said Contract Zone Agreement as presented to the Town Council on March 9, 2009.
VOTE: PASSAGE 5-1-1 (Councilor Perfetti opposed and Councilor Moriarty abstaining)

Councilor Storey-King sought clarification regarding the two entities, asking the contract zone ends if the credit union is no longer operating. Attorney Cole responded that the contract zone approval is between this particular credit union and the town. Should this credit union fail, there could be no successor credit union without the authorization and approval by this council.

Motion by Councilor Porter, seconded by Councilor Copp, to amend Article 111(c)(5), Parking of said Contract Zoning Agreement, to reduce the number of offsite parking spaces from six to three.
VOTE: PASSAGE 5-1-1 (Councilor Perfetti opposed and Councilor Moriarty abstaining)

09 – 031 To hold a Public Hearing to consider and act on a Rines Forest Management Plan as recommended by the Rines Property Citizens Advisory Committee.

Sally Stockwell, Rines Committee representative, stated the Town purchased the forest in 2003. The forest contains over 200 acres and is part of the “largest forested acreage in the town.” In 2005, the committee worked with the Cumberland Mainland and Islands Trust to place a permanent conservation easement on the Rines Forest. The Trust hosted a snow-shoe event last weekend where 75 individuals participated. “We are seeing increased use of the property.” The Rines Forest Committee has worked on developing a long-term management plan with a licensed Forester, Jay Braunscheidel, with a vision of retaining “a wonderful forested resource on the site.” The guideposts of the management goals strive for forest stands to enhance habitat and protection of biological features and functionality by using the “focus species forestry approach.” Every reasonable effort should be made to control invasive plant species, while reaching out to adjacent landowners to encourage the same. A photo showing an invasive plant was described as “a medium density buckthorn” by Mr. Braunscheidel, who recommended an aggressive plan of action for mechanical control of the plant. Eastern Hemlock still exists throughout the forest and pockets of older groups should be retained when possible. Management systems have given rise to “two and possibly three aged stands.” Uneven aged management is recommended in these patches.

Councilor Porter asked if the buckthorn is replete throughout the forest. A good amount is contained within the red pine stand. Treatment involves cutting the stems, allowing resprouting, followed potentially by chemical treatment. Once it is in check, this is the kind of thing that can be managed.” They propose to treat between 25 and 40 percent in 2010. Councilor Moriarty sought the position of the Land Trust. Bruce Wildes, Rines Forest and Land Trust Committee member, responded that the Land Trust “has full buy into the land management to date.” Ted Chadbourne, asked about chemical treatment of the buckthorn and FSC certification. FSC certification is recommended for the Rines Forest.

Motion by Councilor Stiles, seconded by Councilor Moriarty, to adopt the Rines Forest Management Plan as recommended by the Rines Forest Advisory Committee.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 034 To hold a Public Hearing to consider and act on a Wharfing Out Permit for Scott Searway, 3 Ledge Road, Map U6A/Lot 28.

Town Manager Shane explained the Shoreland Zoning Ordinance requires a Wharfing Out Permit for all piers and wharves and introduced Coastal Waters Commission Chairman Lewis Incze. Mr. Incze, stated, “We approve of both parts of the application as they are currently written.” The wharfing out permit application contains an after-the-fact approval of the dock installed during the initial phase in 1989. At the time, it was a “transition in how these structures were signed off and approved.” Since the process did not involve the procedure currently in place, the town now requests a retroactive approval. The second part of the application requests an expansion to the dock in the form of an extended ramp onto a second float. The purpose is to gain access into a lower part of the tide. The committee recommends application approval with the following conditions: an inspection occur prior to May 1, 2009, for erosion along the existing embankment area of the pier; no float or ramp storage be allowed on the property or adjacent properties without an approved Shoreland Zoning application by the Planning Board; and the existing pier application approved by the Code Enforcement Officer be accepted as compliant with local ordinances and regulations. The Town Manager stated the applicant Scott Searway has provided a warranty deed to the right, title and interest to the riparian rights and low tidal area at this property. Mr. Essio questioned the purpose of the wharf and was informed the wharf

was requested for personal rather than commercial reasons. Mr. Essio requested town consideration of “some kind of town landing,” stating “It looks to me like the kind of wharf the town might put in.” Councilor Moriarty responded the town is constrained by geography issues like parking and access at the town landing site.

Motion by Councilor Porter, seconded by Councilor Stiles, to approve the Wharfing Out Permit for Scott and Janice Searway, 3 Ledge Road, Map U6A/Lot 28, with conditions proposed by the Coastal Waters Commission identified in their February 25, 2009 meeting minutes. (The three conditions are included above)

VOTE: UNANIMOUS PASSAGE 7-0

09 – 035 To set a Public Hearing date (March 23rd) to consider and act on an application from the Sparrow’s Nest for a Victualer’s/Mobile Cart at the 9th hole of the Val Halla Golf Course.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to set a public hearing date of March 23rd to consider and act on an application from the Sparrow’s Nest, d/b/a Beach Dawgs, for a Victualer’s/Mobile Cart for use on the Val Halla Golf Course, for the period of March 9, 2009 through June 30, 2009.

VOTE: PASSAGE 6-1 (Councilor Storey-King abstaining)

09 – 036 To set a Public Hearing date (March 23rd) to consider and act on sending a recommendation to the Planning Board re: changes to Section 501 (Non-Conforming Uses) of the Cumberland Zoning Ordinance.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to set a public hearing date of March 23rd to consider and act on sending a recommendation to the Planning Board re: changes to Section 501 (Non-Conforming Uses) of the Cumberland Zoning Ordinance.

VOTE: UNANIMOUS PASSAGE 7-0

V. NEW BUSINESS

Councilor Copp – enjoyed Town Manager Shane’s 50th birthday party; extended condolences to the Patika family.

Councilor Moriarty – a decision received on Greenlaw Salvage affirming the town’s action denying the junkyard permit; now a 30 day appeal period is ticking.

Town Manager Shane – residents will receive a letter related to vernal pools; we have a grant to map the pools in the community; we can not go on land without property owners permission; Twin Brooks Park has a set of operating rules dictated by council policy which currently states the park is open from sunrise to sunset; “closing the gates has been a bit problematic” and he recommended the gates closed at 9 pm and opened at 5 am; he will bring this item back to the council in April in order to amend the policy; the winter is particularly difficult because the gates are often open during snow storms so the road can be plowed; closing at 9 pm allows use of the park by snow skiers and others after sunset and still allows us to “be good neighbors.”

VI. EXECUTIVE SESSION – pursuant to Title 36 M.R.S.A., § 841, re: Poverty Abatement Requests for property identified as Map U20/Lot 9A and Map U02/Lot U02/31.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to recess to Executive Session pursuant to Title 36 M.R.S.A. 841 re: poverty abatement requests for properties identified as Map U20/Lot 9A and Map U02/Lot 31.

VOTE: UNANIMOUS PASSAGE 7-0
TIME: 11:10 p.m.

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

VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Stiles absent)
TIME: 11:30 p.m.

Motion by Councilor Moriarty, seconded by Councilor Copp, to deny the poverty abatement request for Map U20/Lot 9A on the grounds the applicant is not the property owner of record.

VOTE: UNANIMOUS PASSAGE 6-0
TIME: 11:30 P.M.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to deny the poverty abatement request for Map U01/Lot 31 and recommend the applicant contact the town to determine what other financial and/or assistance resources are available.

VOTE: UNANIMOUS PASSAGE 6-0
TIME: 11:30 p.m.

VII. ADJOURNMENT

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

VOTE: UNANIMOUS PASSAGE 6-0
TIME: 11:31 p.m.